

COMMITTEE ACTION SHEET

COUNCIL DOCKET OF

700 NW 20, 2007☐ Supplemental ☐ Adoption ☐ Consent ☒ Unanimous Consent Rules Committee Consultant Review

R -

O -

Professional Services Contracts for San Diego CWA Emergency Storage Project

☒ Reviewed ☐ Initiated By NR&C On 9/26/07 Item No. 3a

RECOMMENDATION TO:

Approve

VOTED YEA: Frye, Hueso, Maienschein, Faulconer

VOTED NAY:

NOT PRESENT:

CITY CLERK: Please reference the following reports on the City Council Docket:

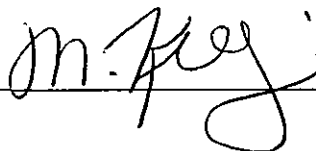
REPORT TO THE CITY COUNCIL NO.

COUNCIL COMMITTEE CONSULTANT ANALYSIS NO.

OTHER:

Water Department's Executive Summary Sheet dated September 17, 2007; Water Department's September 26, 2007, Power Point

COUNCIL COMMITTEE CONSULTANT



EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE ISSUED: September 17, 2007 REPORT NO: N/A
ATTENTION: Natural Resources & Culture Committee,
Agenda of September 26, 2007
ORIGINATING DEPARTMENT: Water Department
SUBJECT: Professional Services Contracts with Martin Dense, Donald
H. Babbitt, and John S. Gregg, for the Project Review and
Coordination Panel for the San Vicente Project, a
Component of the San Diego County Water Authority
Emergency Storage Project
COUNCIL DISTRICT(S): All
STAFF CONTACT: Marsi Steirer (619) 533-4112
Richard Calvi (619) 533-5383

REQUESTED ACTION:

Council authorization to (a) expend \$148,500 in funds to cover three professional services contracts with Martin Dense, Donald H. Babbitt, and John S. Gregg, and (b) execute each contract for a period of more than five years.

STAFF RECOMMENDATION:

Staff recommends authorization to obtain professional services from Martin Dense, a qualified independent public finance consultant; Donald H. Babbitt, a qualified independent professional engineer consultant; and John S. Gregg, a qualified independent water resource contract administrator consultant. These consultants were selected based on their participation as panel members on the Olivenhain Dam Project, a subset of the San Diego County Water Authority's Emergency Storage Project. Under the subject contracts, these consultants will be serving in the same capacity.

EXECUTIVE SUMMARY:

In May 1998, the City Council adopted an ordinance which authorized the execution of an Agreement with the San Diego County Water Authority (CWA) for the use of the San Vicente Reservoir as part of the Emergency Storage Project (ESP). The City components of the San Vicente Project, a subset of the ESP, provide for (a) a raised San Vicente Dam and associated reservoir land, (b) new or improved outlet works and associated pipeline through the Dam and the emergency San Vicente Reservoir drain structure; and (c) expanded or enhanced recreation facilities located at the Reservoir.

Appendix F of the Agreement, entitled "Dispute Resolution," provides for a Project Review and Coordination Panel. The Panel shall provide for a prompt and orderly means of resolving disputes between staffs of the City and the CWA in connection with the design and construction of the San Vicente Project, and the operation, maintenance, and repair and replacement of the San Vicente Reservoir. The Panel consists of five members: one member who is appointed by the CWA General Manager; one member appointed by the Chief Operating Officer of the City of San Diego; one member who is an independent professional engineer and is mutually agreed to by the General Manager and the Chief Operating Officer; one member who is an independent certified public accountant and is mutually agreed to by the General Manager and the Chief

Operating Officer; and one member who is an independent contract administrator for water resource projects and is mutually agreed to by the General Manager and the Chief Operating Officer.

PROJECT DESCRIPTION

The definition and purpose of the Project Review and Coordination Panel is specified in Appendix F of the Agreement between the City and the CWA. Section (2) sets forth the composition and qualifications requirements of the Panel members. The subject consultants will deliver their services in accordance with Appendix F, as referenced in their contracts. Specifically, Martin Dense will provide independent certified public accountant services; Donald H. Babbitt will provide independent professional engineer services; and John S. Gregg will provide independent water resource contract administration services. Upon contract execution, each professional services contract will continue through December 31, 2014. As such, an ordinance adopted by Council to authorize each contract will be required per City Charter, Article VII, Section 99.

FISCAL CONSIDERATIONS:

The total not-to-exceed contract amount is \$49,500 per consultant. This action will make \$148,500 available in Water Fund 41500, Department 760, Organization 120.

PREVIOUS COUNCIL/COMMITTEE ACTION:

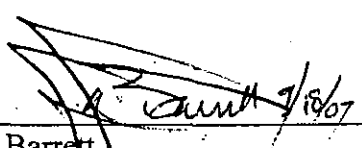
On May 26, 1998, the City Council adopted an Ordinance Number O-18521 which authorized the City Manager to execute an Agreement (Document No. OO-18521-1) with the San Diego County Water Authority for use of the San Vicente Reservoir as part of the Emergency Storage Project.


COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Not applicable.

KEY STAKEHOLDERS:

Not applicable.


J. M. Barrett
Water Department Director


R. F. Haas
Deputy Chief of Public Works



San Diego County Water Authority Emergency Storage Project

Project Review and Coordination Panel for San Vicente Project



000149

NRCC 9/26/07 F3a

Background

000150

- On May 26, 1998, Ordinance No. O-18521 authorized an Agreement with the SD County Water Authority (CWA) for use of the San Vicente Reservoir as part of the Emergency Storage Project
- The City and CWA are contractually required by the Agreement (Appendix F) to form a Project Review and Coordination Panel to provide a prompt and orderly means of resolving disputes between the City and CWA
- The Panel is comprised of five members: a City representative, a CWA representative, an independent professional engineer, an independent certified public accountant, and an independent water resource contract administrator

Project Description

000151

Secure the services of three independent consultants to complete the required complement of five Panel members:

- ✿ Donald Babbitt will provide professional engineer services
- ✿ Martin Dense will provide independent certified public accountant services
- ✿ John Gregg will provide independent resource contract administration services

Based on the construction schedule for the San Vicente Project, the City and CWA will require the above consultant services through December 31, 2014

Requested Action

000152

- Authorize via Council ordinance the expenditure of \$148,500 in funds to cover the three professional services contracts for a period exceeding five years
- City Charter Article VII, Section 99, requires contract obligations greater than five years be authorized by ordinance after holding a public hearing.

EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION

September 28, 2007

SUBJECT: Professional Services Contract for San Diego CWA Emergency Storage Project

GENERAL CONTRACT INFORMATION

Recommended Consultant: Martin Dense, Independent Public Finance Consultant

Amount of this Action: \$ 49,500

Funding Source: City of San Diego

Recommended Consultant: Donald H. Babbitt, Independent Professional Engineer Consultant

Amount of this Action: \$ 49,500

Funding Source: City of San Diego

Recommended Consultant: John S. Gregg, Independent Water Resource Contract Administrator Consultant

Amount of this Action: \$ 49,500

Funding Source: City of San Diego

SUBCONSULTANT PARTICIPATION

No subconsultant participation for this action.

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

Equal Opportunity: Required

Martin Dense, Independent Public Finance Consultant, submitted a Work Force Report for San Diego County dated October 5, 2007. The Administrative staff reflects fewer than fifteen employees and is therefore exempt from employment category goals.

Donald H. Babbitt, Independent Professional Engineer Consultant, submitted a Work Force Report for Sacramento County dated October 2, 2007. The Administrative staff reflects fewer than fifteen employees and is therefore exempt from employment category goals.

John S. Gregg, Independent Water Resource Contract Administrator Consultant, submitted a Work Force Report for a county for which we do not have goals. The Administrative staff reflects fewer than fifteen employees and is therefore exempt from employment category goals.

ADDITIONAL COMMENTS

The *Work Force Analyses* are attached.

MMJ

File: Admin WOFO 2000

Date WOFO Submitted: 10/4/2007
Input by: SHGoals reflect statistical labor force
availability for the following: 2000 CLFA
San Diego, CACity of San Diego/Equal Opportunity Contracting
WORK FORCE ANALYSIS REPORTFOR
Company: John Gregg (Sole Proprietor - Consultant)

I. TOTAL WORK FORCE:

	Black			Hispanic			Asian			American Indian			Filipino			White		Other	
	CLFA Goals	M	F	CLFA Goals	M	F	CLFA Goals	M	F	CLFA Goals	M	F	CLFA Goals	M	F	M	F	M	F
Mgmt & Financial	3.3%	0	0	11.9%	0	0	8.2%	0	0	0.4%	0	0	6.2%	0	0	0	0	0	0
Professional	4.0%	0	0	12.6%	0	0	8.5%	0	0	0.5%	0	0	6.5%	0	0	1	0	0	0
A&E, Science, Computer	2.8%	0	0	7.3%	0	0	16.2%	0	0	0.3%	0	0	16.2%	0	0	0	0	0	0
Technical	6.6%	0	0	14.8%	0	0	17.2%	0	0	0.4%	0	0	17.2%	0	0	0	0	0	0
Sales	3.9%	0	0	19.5%	0	0	6.8%	0	0	0.8%	0	0	8.8%	0	0	0	0	0	0
Administrative Support	7.0%	0	0	20.8%	0	0	8.8%	0	0	0.6%	0	0	8.8%	0	0	0	0	0	0
Services	5.5%	0	0	36.9%	0	0	9.7%	0	0	0.6%	0	0	9.7%	0	0	0	0	0	0
Crafts	4.5%	0	0	25.8%	0	0	9.1%	0	0	0.7%	0	0	9.1%	0	0	0	0	0	0
Operative Workers	4.3%	0	0	38.8%	0	0	20.8%	0	0	0.3%	0	0	20.8%	0	0	0	0	0	0
Transportation	8.1%	0	0	32.1%	0	0	4.5%	0	0	0.5%	0	0	4.5%	0	0	0	0	0	0
Laborers	4.4%	0	0	54.0%	0	0	4.1%	0	0	0.5%	0	0	4.1%	0	0	0	0	0	0
TOTAL		0	0		0	0		0	0		0	0		0	0	1	0	0	0

HOW TO READ TOTAL WORK FORCE SECTION:

The information blocks in Section 1 (Total Work Force) identify the absolute number of the firm's employees. Each employee is listed in their respective ethnic/gender and employment category. The percentages listed under the heading of "CLFA Goals" are the County Labor Force Availability goals for each employment and ethnic/gender category.

Mgmt & Financial
Professional
A&E, Science, Computer
Technical
Sales
Administrative Support
Services
Crafts
Operative Workers
Transportation
Laborers

TOTAL

TOTAL EMPLOYEES		
ALL	M	F
0	0	0
1	1	0
0	0	0
0	0	0
0	0	0
0	0	0
0	0	0
0	0	0
0	0	0
0	0	0
0	0	0
1	1	0

Female Goals
39.8%
59.5%
22.3%
49.0%
49.4%
73.2%
62.3%
8.6%
36.7%
15.2%
11.1%

HOW TO READ EMPLOYMENT ANALYSIS SECTION:

The percentages listed in the goals column are calculated by multiplying the CLFA goals by the number of employees in that job category. The number in that column represents the percentage of each protected group that should be employed by the firm to meet the CLFA goal. A negative number will be shown in the discrepancy column for each underrepresented goal of at least 1.00 position.

II. EMPLOYMENT ANALYSIS

This firm has fewer than 15 employees and is, therefore, exempt from the employment category goals.

File: Admin WOFO 2000

Date WOFO Submitted: 10/2/2007
Input by: SHGoals reflect statistical labor force
availability for the following: 2000 CLFA
Sacramento County, CA

City of San Diego/Equal Opportunity Contracting

WORK FORCE ANALYSIS REPORT

FOR

Company: Donald H. Babbitt (Sole Proprietor - Consultant)

I. TOTAL WORK FORCE:

	Black		Hispanic		Asian		American Indian		Filipino		White		Other	
	CLFA Goals		CLFA Goals		CLFA Goals		CLFA Goals		CLFA Goals		CLFA Goals		CLFA Goals	
Mgmt & Financial	6.6%	0	8.4%	0	7.5%	0	0.8%	0	7.5%	0	0	0	0	0
Professional	7.6%	0	8.8%	0	7.9%	0	0.6%	0	7.9%	0	0	1	0	0
A&E, Science, Computer	5.4%	0	8.1%	0	15.9%	0	0.4%	0	15.9%	0	0	0	0	0
Technical	7.9%	0	9.7%	0	12.9%	0	1.1%	0	12.9%	0	0	0	0	0
Sales	6.3%	0	10.9%	0	9.3%	0	0.8%	0	9.3%	0	0	0	0	0
Administrative Support	11.0%	0	13.5%	0	9.1%	0	0.8%	0	9.1%	0	0	0	0	0
Services	10.6%	0	18.9%	0	12.5%	0	1.0%	0	12.5%	0	0	0	0	0
Crafts	6.3%	0	14.7%	0	7.8%	0	0.8%	0	7.8%	0	0	0	0	0
Operative Workers	8.9%	0	22.4%	0	19.9%	0	0.6%	0	19.9%	0	0	0	0	0
Transportation	9.2%	0	18.2%	0	6.4%	0	0.7%	0	6.4%	0	0	0	0	0
Laborers	9.1%	0	34.3%	0	6.1%	0	0.8%	0	6.1%	0	0	0	0	0
TOTAL		0		0		0		0		0		1		0

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Mgmt & Financial
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Crafts
Operative Workers
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Laborers

TOTAL

TOTAL EMPLOYEES		
ALL	M	F
0	0	0
1	1	0
0	0	0
0	0	0
0	0	0
0	0	0
0	0	0
0	0	0
0	0	0
0	0	0
0	0	0
1	1	0

Female
Goals
45.8%
61.5%
33.0%
54.1%
48.8%
72.9%
61.2%
9.9%
34.4%
13.1%
13.7%

HOW TO READ EMPLOYMENT ANALYSIS SECTION:

The percentages listed in the goals column are calculated by multiplying the CLFA goals by the number of employees in that job category. The number in that column represents the percentage of each protected group that should be employed by the firm to meet the CLFA goal. A negative number will be shown in the discrepancy column for each underrepresented goal of at least 1.00 position.

II. EMPLOYMENT ANALYSIS

This firm has fewer than 15 employees and is, therefore, exempt from the employment category goals.

File: Admin WOFO 2000

Date WOFO Submitted: 10/5/2007

Input by: SH

Goals reflect statistical labor force
availability for the following: 2000 CLFA
San Diego, CA

City of San Diego/Equal Opportunity Contracting

WORK FORCE ANALYSIS REPORT

FOR

Company: Martin Dense (Sole Proprietor - Consultant)

I. TOTAL WORK FORCE:

	Black		Hispanic		Asian		American Indian		Filipino		White		Other	
	CLFA Goals		CLFA Goals		CLFA Goals		CLFA Goals		CLFA Goals		CLFA Goals		CLFA Goals	
Mgmt & Financial	3.3%	0	11.9%	0	6.2%	0	0.4%	0	6.2%	0	1	0	0	0
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A&E, Science, Computer	2.8%	0	7.3%	0	16.2%	0	0.3%	0	16.2%	0	0	0	0	0
Technical	6.6%	0	14.8%	0	17.2%	0	0.4%	0	17.2%	0	0	0	0	0
Sales	3.9%	0	19.5%	0	8.8%	0	0.6%	0	8.8%	0	0	0	0	0
Administrative Support	7.0%	0	20.8%	0	8.8%	0	0.6%	0	8.8%	0	0	0	0	0
Services	5.5%	0	36.9%	0	9.7%	0	0.6%	0	9.7%	0	0	0	0	0
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Operative Workers	4.3%	0	38.8%	0	20.8%	0	0.3%	0	20.8%	0	0	0	0	0
Transportation	8.1%	0	32.1%	0	4.5%	0	0.5%	0	4.5%	0	0	0	0	0
Laborers	4.4%	0	54.0%	0	4.1%	0	0.5%	0	4.1%	0	0	0	0	0
TOTAL		0		0		0		0		0	1	0		0

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Laborers

TOTAL

TOTAL EMPLOYEES		
ALL	M	F
1	1	0
0	0	0
0	0	0
0	0	0
0	0	0
0	0	0
0	0	0
0	0	0
0	0	0
0	0	0
0	0	0
1	1	0

Female
Goals
39.8%
59.5%
22.3%
49.0%
49.4%
73.2%
62.3%
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15.2%
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II. EMPLOYMENT ANALYSIS

This firm has fewer than 15 employees and is, therefore, exempt from the employment category goals.

REQUEST FOR COUNCIL ACTION

CITY OF SAN DIEGO

1. CERTIFICATE NUMBER (FOR AUDITOR'S USE) 12/04

AC 2800343

TO: CITY ATTORNEY	2. FROM (ORIGINATING DEPARTMENT): Water Department-Water Policy & Strategic Planning	3. DATE: September 20, 2007
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4. SUBJECT: Professional Services Contracts for San Diego CWA Emergency Storage Project

5. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.) M. Steirer (619)-533-4112 MS906	6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.) R. Calvi (619)-533-5383 MS906	7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED <input checked="" type="checkbox"/>
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8. COMPLETE FOR ACCOUNTING PURPOSES

FUND	41500				9. ADDITIONAL INFORMATION / ESTIMATED COST:
DEPT.	760				Project Review and Coordination Panel \$ 148,500
ORGANIZATION	120				
OBJECT ACCOUNT	4151 4222 VC				
JOB ORDER	001260				
C.I.P. NUMBER	N/A				
AMOUNT	\$148,500				

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	DEPARTMENT DIRECTOR	<i>[Signature]</i>	9/20/07	8	DEPUTY CHIEF	<i>[Signature]</i>	10/31/07
2	EAS	<i>[Signature]</i>	9/24/07	9	COO	<i>[Signature]</i>	
3	EOC	<i>[Signature]</i>	10-16-07	10	CITY ATTORNEY	<i>[Signature]</i>	11/5/07
4	LIAISON OFFICE	<i>[Signature]</i>	10/18/07	11	ORIG. DEPT	<i>[Signature]</i>	
5	CIP/FM	<i>[Signature]</i>	10/25/07	DOCKET COORD: <i>[Signature]</i> COUNCIL LIAISON <i>[Signature]</i>			
6	AUDITORS	<i>[Signature]</i>	10/30/07	COUNCIL PRESIDENT <i>[Signature]</i> <input type="checkbox"/> SPOB <input checked="" type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION <input type="checkbox"/> REFER TO: COUNCIL DATE: 11/20/07			
7							

11. PREPARATION OF: ☒ RESOLUTIONS ☒ ORDINANCE(S) ☒ AGREEMENT(S) ☐ DEED(S)

1. Authorizing the expenditure of \$148,500 from Water Utility Operating Fund 41500 for the purpose of funding the consulting services agreements; and

(Please see other side)

11A. STAFF RECOMMENDATIONS:

Approve the agreement.

12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S): Citywide

COMMUNITY AREA(S): Citywide

CITY CLERK INSTRUCTIONS: Please return (a) two (2) copies of the 1472, Auditor's Certificate, Ordinance and/or Resolution, and (b) three (3) original signature copies of each Professional Services Contract to Richard Calvi, 533-5383, MS 906

ENVIRONMENTAL IMPACT: This activity is not a "project and is therefore not subject to CEQA per CEQA Guidelines Section 15060 (c) (2).

This Action is subject to Charter Section 99 and requires six (6) votes for docketing purposes.

EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE ISSUED:	September 26, 2007	REPORT NO: N/A
ATTENTION:	Council President and City Council	
ORIGINATING DEPARTMENT:	Water Department	
SUBJECT:	Professional Services Contracts for San Diego CWA Emergency Storage Project	
COUNCIL DISTRICT(S):	All	
STAFF CONTACT:	Marsi Steirer (619) 533-4112 Richard Calvi (619) 533-5383	

REQUESTED ACTION:

Council authorization to (a) expend \$148,500 in funds to cover three professional services contracts with Martin Dense, Donald H. Babbitt, and John S. Gregg, and (b) execute each contract for a period of more than five years.

STAFF RECOMMENDATION:

Staff recommends authorization to obtain professional services from Martin Dense, a qualified independent public finance consultant; Donald H. Babbitt, a qualified independent professional engineer consultant; and John S. Gregg, a qualified independent water resource contract administrator consultant. These consultants were selected based on their participation as panel members on the Olivenhain Dam Project, a subset of the San Diego County Water Authority's Emergency Storage Project. Under the subject contracts, these consultants will be serving in the same capacity.

EXECUTIVE SUMMARY:

In May 1998, the City Council adopted an ordinance which authorized the execution of an Agreement with the San Diego County Water Authority (CWA) for the use of the San Vicente Reservoir as part of the Emergency Storage Project (ESP). The City components of the San Vicente Project, a subset of the ESP, provide for (a) a raised San Vicente Dam and associated reservoir land, (b) new or improved outlet works and associated pipeline through the Dam and the emergency San Vicente Reservoir drain structure; and (c) expanded or enhanced recreation facilities located at the Reservoir.

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PROJECT DESCRIPTION

The definition and purpose of the Project Review and Coordination Panel is specified in Appendix F of the Agreement between the City and the CWA. Section (2) sets forth the composition and qualifications requirements of the Panel members. The subject consultants will deliver their services in accordance with Appendix F, as referenced in their contracts. Specifically, Martin Dense will provide independent certified public accountant services; Donald H. Babbitt will provide independent professional engineer services; and John S. Gregg will provide independent water resource contract administration services. Upon contract execution, each professional services contract will continue through December 31, 2014. As such, an ordinance adopted by Council to authorize each contract will be required per City Charter, Article VII, Section 99.

FISCAL CONSIDERATIONS:

The total of this request is \$148,500 and is available in Water Utility Operating Fund 41500, Department 760, Organization 120.

PREVIOUS COUNCIL/COMMITTEE ACTION:

On September 26, 2007, the Natural Resources and Culture Committee unanimously approved this requested action as Agenda Item-3.A. On May 26, 1998, the City Council adopted an Ordinance Number O-18521 which authorized the City Manager to execute an Agreement (Document No. OO-18521-1) with the San Diego County Water Authority for use of the San Vicente Reservoir as part of the Emergency Storage Project.

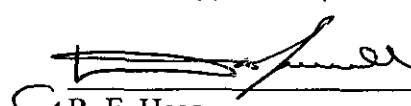
COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Not applicable.

KEY STAKEHOLDERS:

Martin Dense, Independent Public Finance Consultant, Donald H. Babbitt, Independent Professional Engineer Consultant, and John S. Gregg, Independent Water Resource Contract Administrator Consultant.


J. M. Barrett
Water Department Director


R. F. Haas
Deputy Chief of Public Works

000161

The City of San Diego
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER

CERTIFICATE OF UNALLOTTED BALANCE

AC 2800343

ORIGINATING DEPT. NO.: 760

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: _____ Fund: _____

 Purpose: _____

Date: _____ By: _____

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
TOTAL AMOUNT										
										FUND OVERRIDE <input type="checkbox"/>

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: \$148,500.00

Vendor: Various

 Purpose: Authorizing the expenditure of funds for professional services contracts with Martin Dense, Donald H. Babbitt, and John S. Gregg for San Diego CWA Emergency Storage Project.
Date: October 30, 2007 By: L. Chim 

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
1	0	41500	760	120	4151	001260				148,500.00
TOTAL										\$148,500.00

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AUTHORIZING EXECUTION OF
AGREEMENTS FOR PROFESSIONAL SERVICES FOR SAN
DIEGO COUNTY WATER AUTHORITY EMERGENCY
STORAGE PROJECT; FOR EXPENDITURE OF FUNDS; AND
TAKING RELATED ACTIONS.

WHEREAS, in May 1998, the City Council adopted an ordinance which authorized the execution of an Agreement with the San Diego County Water Authority for the use of the San Vicente Reservoir as part of the Emergency Storage Project; and

WHEREAS, the Agreement provides for a Project Review and Coordination Panel to provide for a prompt and orderly means of resolving disputes between staffs of the City and the San Diego County Water Authority in connection with the design and construction of the San Vicente Project and the operation, maintenance, and repair and replacement of the San Vicente Reservoir; and

WHEREAS, in order to fulfill the purposes of the Agreement and the Emergency Storage Project, authorization is sought to obtain professional services from Martin Dense, a qualified independent public finance consultant; Donald H. Babbitt, a qualified independent professional engineer consultant; and John S. Gregg, a qualified independent water resource contract administrator consultant; and

WHEREAS, each professional services contract will continue through December 31, 2014, thus an ordinance adopted by Council to authorize each contract will be required per City Charter, Article VII, Section 99; NOW, THEREFORE:

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That the expenditure of an amount not to exceed \$148,500 from Water Fund 41500 is authorized for contracted professional consulting services provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds are, or will be, on deposit with the City Treasurer; and

Section 2. That the Mayor or his designee is hereby authorized by ordinance to execute one consultant agreement with Martin Dense, for consulting services for the San Diego County Water Authority Emergency Storage Project in an amount not to exceed \$49,500 [Dense Agreement], on file in the Office of the City Clerk as Document No. RR-_____.

Section 3. That the Mayor or his designee is hereby authorized by ordinance to execute one consultant agreement with Donald H. Babbitt for consulting services for the San Diego County Water Authority Emergency Storage Project in an amount not to exceed \$49,500 [Babbitt Agreement], on file in the Office of the City Clerk as Document No. RR-_____.

Section 4. That the Mayor or his designee is hereby authorized by ordinance to execute one consultant agreement with John S. Gregg for consulting services for the San Diego County Water Authority Emergency Storage Project in an amount not to exceed \$49,500 [Gregg Agreement], on file in the Office of the City Clerk as Document No. RR-_____.

Section 5. That the City Auditor and Comptroller is authorized, upon advice from the administering department, to transfer excess budgeted funds, if any, to the appropriate reserves.

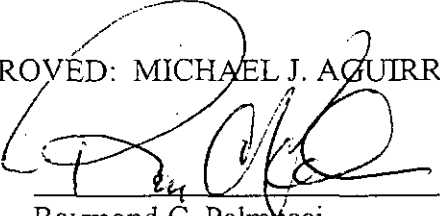
Section 6. That the City Council finds that this activity is not a project for purposes of review under the California Environmental Quality Act [CEQA], per CEQA Guidelines Section 15060(c)(2).

Section 7. That a full reading of this Ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 8. That this Ordinance shall take effect and be in force on the thirtieth (30th) day from and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By


Raymond C. Palmucci
Deputy City Attorney

RCP:cq
11/05/2007
Or.Dept: Water Dept.
O-2008-66

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

PROFESSIONAL SERVICES CONTRACT

1. PARTIES:

The parties to this contract are the SAN DIEGO COUNTY WATER AUTHORITY, a county water authority, (the Water Authority), CITY OF SAN DIEGO, a municipal corporation (City), and DONALD H. BABBITT, a sole proprietor (Contractor).

2. SCOPE OF SERVICES:

The services to be provided by Contractor for the Project Review and Coordination Panel for the San Vicente Dam Raise and Recreational Facilities are described in Attachment A.

3. PAYMENT:

(a) Payment for services. The Water Authority and City shall pay for services performed in accordance with this contract according to the payment and fee schedule contained in Attachment B.

(b) Reimbursement of expenses. Contractor will be reimbursed for actual, reasonable and necessary expenses incurred in the performance of services in accordance with the expense reimbursement schedule included in Attachment B.

(c) Maximum payment. The maximum payment under this contract for services and, if authorized, reimbursement of expenses, shall not exceed \$49,500.

(d) Invoices. All invoices for services will be submitted according to Attachment B. The Water Authority generally will process and pay bills within 30 days from receipt. Each bill shall include an invoice showing the amount of services rendered during the billing period and the fee for such services. If reimbursement of expenses is authorized, Contractor shall submit monthly invoices for such expenses, including full documentation of each expense incurred. Payments are subject to a final audit upon completion of services or other termination of this contract.

(e) Audit of Records. Contractor shall maintain complete and accurate records of all payrolls, expenditures, disbursements and other cost items charged to the Water Authority and City or establishing the basis for an invoice, for a minimum of four years from the date of final payment to Contractor. All such records shall be clearly identifiable. Contractor shall allow Water Authority and City representative to inspect, examine, copy and audit such records during regular business hours upon 24 hours' notice.

4. TIME FOR PERFORMANCE:

(a) Contractor will complete all services by December 31, 2014.

(b) Extension of time for unforeseen circumstances. In the event that the Contractor is unable to meet the completion date or schedule of services, if any, due to circumstances beyond Contractor's reasonable control, such as war, riots, strikes, lockouts, work slow down or

stoppage, except strikes, lockouts, or work slow down or stoppage of Contractor's employees or subcontractors, acts of God, such as floods or earthquakes, and electrical blackouts or brownouts, Contractor shall inform the Contract Manager of the additional time required to perform the work and the Contract Manager may adjust the schedule.

5. STANDARD OF PERFORMANCE:

Contractor's services shall be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of Contractor's profession currently practicing under similar conditions. Whenever the scope of work requires or permits approval by the Water Authority and City, it is understood to be approval solely for the purposes of conforming to the requirements of the scope of work and not acceptance of any professional or other responsibility for the work. Such approval does not relieve the Contractor of responsibility for complying with the standard of performance or laws, regulations, industry standards, or from liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of Contractor or its subcontractors. By delivery of completed work, Contractor certifies that the work conforms to the requirements of this contract and all applicable federal, state and local laws. If Contractor is retained to perform services requiring a license, *certification, registration or other similar requirement under California law*, Contractor shall maintain that license, certification, registration or other similar requirement throughout the term of this Contract.

6. INDEPENDENT CONTRACTOR:

Contractor is an independent contractor. Neither Contractor nor any of Contractor's officers, employees, agents or subcontractors, if any, is an employee of the Water Authority or City by virtue of this contract or performance of any work under this contract.

7. ASSIGNMENT:

Contractor shall not assign or transfer voluntarily or involuntarily any of its rights, duties, or obligations under this contract without the express written consent of the Water Authority and City in each instance.

8. SUBCONTRACTORS:

Contractor will perform the work personally or through Contractor's employees. Contractor may subcontract work only upon prior approval of the Water Authority and in compliance with provisions of the Water Authority's Small Contractor Outreach and Opportunities Program, if the Water Authority determines that the program provisions are applicable.

9. CONTRACTOR'S EMPLOYEES:

(a) Immigration Reform and Control Act of 1986. Contractor is aware of the requirements of the Immigration Reform and Control Act of 1986 and shall comply with those requirements,

including, but not limited to, verifying the eligibility for employment of all of Contractor's agents, employees, subcontractors and Contractors that are included in this contract.

(b) **Limitation of Water Authority and City Liability.** The payment made to Contractor pursuant to this contract shall be the full and complete compensation to which Contractor and Contractor's officers, employees, agents and subcontractors are entitled for performance of any work under this contract. Neither Contractor nor Contractor's officers or employees are entitled to any salary or wages, or retirement, health, leave or other fringe benefits applicable to employees of the Water Authority and City. The Water Authority and City will not make any federal or state tax withholdings on behalf of Contractor. The Water Authority and City shall not be required to pay any workers' compensation insurance on behalf of Contractor.

(c) **Indemnification for Employee Payments.** Contractor agrees to defend and indemnify the Water Authority and City for any obligation, claim, suit or demand for tax, retirement contribution including any contribution to the Public Employees Retirement System (PERS), social security, salary or wages, overtime payment, or workers' compensation payment which the Water Authority and City may be required to make on behalf of Contractor or any employee of Contractor, or any employee of Contractor construed to be an employee of the Water Authority and City, for work done under this contract. This is a continuing obligation that survives the termination of this contract.

10. FAIR EMPLOYMENT PRACTICES:

(a) **Administrative Code Provisions.** Contractor acknowledges and agrees to abide by the following provision of the Water Authority Administrative Code Section 2.24.010 that states:

“(a) It is the policy of the Authority to protect and safeguard the right and opportunity of all persons to seek, obtain, and hold employment without discrimination or abridgment on account of race, color, ethnicity, national origin, ancestry, religion, creed, veteran status, physical disability, mental disability, medical condition, marital status, sex, sexual orientation, age, or other status protected from workplace discrimination by state or federal law. Authority officers, employees and Contractors shall not knowingly deny an Authority opportunity or benefit, discriminate against or harass, any Authority employee, applicant for employment, contractor, vendor, or recipient of Authority services on account of the person's race, color, ethnicity, national origin, ancestry, religion, creed, veteran status, physical disability, mental disability, medical condition, marital status, sex, sexual orientation, age, or other status protected from workplace discrimination by state or federal law. Authority officers, employees and Contractors shall not knowingly give preferential treatment to any applicant for employment, bidder, contractor, vendor, or recipient of Authority services on the basis of race, color, ethnicity, national origin, ancestry, religion, creed, physical disability, mental disability, medical condition, marital status, sex, or sexual orientation.

“(b) This section shall be interpreted in a manner that is consistent with the California and United States Constitutions and applicable state and federal statutes governing workplace discrimination. The terms used in this section shall have the same meaning as defined in state statutes governing the same subject matter.

“(c) Nothing in this section shall be interpreted as prohibiting bona fide occupational qualifications consistent with applicable state and federal law and reasonably necessary to the normal operation of Authority employment or contracting. Nothing in this section shall be interpreted as prohibiting regulations and policies to prevent nepotism or conflicts of interest.

“(d) Nothing in this section shall be interpreted as prohibiting action taken to establish or maintain eligibility for any federal program, where ineligibility would result in a loss of federal funds to the Authority.”

(b) Civil Rights Act. Contractor agrees to comply with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, the Americans with Disabilities Act of 1990, any other applicable federal and state laws and regulations hereinafter enacted, and the Water Authority's Small Contractor Outreach and Opportunities Program.

(c) Water Authority Discrimination/Harassment Policy. Contractor and its officers, employees, agents and subcontractors shall comply with the Water Authority's Discrimination/Harassment Prohibition Policy in performance of this contract.

(d) City Provisions. The Contractor shall comply with the City's Equal Opportunity Contracting Program Consultant Requirements. The Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. The Contractor shall provide equal opportunity in all employment practices. The Contractor shall ensure that its subcontractors comply with the City's Equal Opportunity Contracting Program Consultant Requirements. Nothing in this paragraph shall be interpreted to hold the Contractor liable for any discriminatory practice of its subcontractors.

The Contractor shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors or suppliers. The Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. The Contractor understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, and other sanctions. This language shall be in contracts between the Contractor and any subcontractors, vendors and suppliers.

Upon the City's request, the Contractor agrees to provide to the City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that the Contractor has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by the Contractor for each subcontract or supply contract. The Contractor further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination in Contracting Ordinance [San Diego Municipal Code sections 22.3501-22.3517.] The Contractor understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in remedies being ordered against the Contractor up to and including contract termination, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. The Contractor further understands and agrees that the procedures, remedies and sanctions provided for in the Nondiscrimination Ordinance apply only to violations of said Nondiscrimination Ordinance.

(e) . Indemnification. To the fullest extent permitted by law and without limitation by the provisions of Section 19 relating to insurance, the Contractor shall also indemnify, defend and hold harmless the Water Authority and City, and its directors, officers, employees and agents from and against all liability (including without limitation all claims, damages, penalties, fines, and judgments, associated investigation and administrative expenses, and defense costs, including but not limited to reasonable attorneys' fees, court costs, and costs of alternative dispute resolution) resulting from any claim of discrimination or harassment, including but not limited to sexual harassment, arising from the conduct of the Contractor or any of the Contractor's officers, employees, agents, licensees, or subcontractors. In the event of a discrimination or harassment complaint against any employee, agent, licensee or subcontractor of the Contractor or its subcontractors, the Contractor shall take immediate and appropriate action in response to such complaint, including, but not limited to termination or appropriate discipline of any responsible employee, agent, licensee or subcontractor. The provisions of this Section survive completion of the services or termination of the Contract.

11. WORKPLACE CONDUCT AND BEHAVIOR:

(a) Contractor and Contractor's officers, employees, agents and subcontractors shall comply with the Water Authority's Substance-free Work Place Policy, Information and Communications Systems Policy, and other rules and regulations governing work place safety, conduct, and behavior, for any portion of the work performed on the premises of the Water Authority or using Water Authority facilities or equipment.

(b) Contractor and Contractor's officers, employees, agents and subcontractors shall comply with the City's Drug-Free Workplace requirements set forth in Council Policy 100-17, adopted by San Diego Resolution R-277952.

12. OWNERSHIP OF WORK PRODUCT:

Upon delivery, the work product, including without limitation, all original reports, writings, recordings, drawings, files, and detailed calculations developed under this contract are the property of the Water Authority and City. Contractor agrees that all copyrights which arise from creation of the work pursuant to this contract shall be vested in the Water Authority and City and waives and relinquishes all claims to copyright or other intellectual property rights in favor of the Water Authority and City. Water Authority and City acknowledges that its use of the work product is limited to the purposes contemplated by the scope of work and that the Contractor makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the scope of work.

13. FORMAT OF DOCUMENTS:

Documents submitted to the Water Authority and City in electronic format shall be formatted according to specifications provided by the Water Authority and City, or if not otherwise specified, in Microsoft Word, Excel, PowerPoint or other Microsoft Suite (2003) format as appropriate for the particular work product or, if directed by the Contract Manager in Adobe Acrobat pdf format.

14. CHANGES IN WORK:

No payment for changed or additional work shall be made unless the changed or additional work has first been approved in writing by the Contract Manager and the parties have agreed upon the appropriate adjustment, if any, to the payment schedule and maximum payment amount for the changed or additional work. The Contract Manager may order changes or additions to the scope of work. Whether a change or addition to the scope of work is proposed by the Contractor or ordered by the Contract Manager, the parties shall in good faith negotiate an appropriate adjustment, if any, to the payment schedule and maximum payment for the changed or additional work. An approved change or addition, along with the payment adjustment, if any, will be effective upon an amendment to this contract executed by both parties. The amendment shall not render ineffective or invalidate unaffected portions of this contract. All changes in work that increase the amount of payment shall be subject to Section 4.04.040 of the Water Authority Administrative Code.

15. CONFIDENTIALITY:

(a) Confidential Nature of Information. Contractor shall treat all information obtained from the Water Authority and City in the performance of this contract as confidential and proprietary to the Water Authority and City. Contractor shall treat all records and work product prepared or maintained by Contractor in the performance of this contract as confidential.

(b) Limitation on use and disclosure. Contractor agrees that it will not use any information obtained as a consequence of the performance of work for any purpose other than fulfillment of Contractor's scope of work. Contractor will not disclose any information prepared for the Water Authority and City, or obtained from the Water Authority and City or obtained as a consequence of the performance of work to any person other than the Water Authority and City, or its own employees, agents or subcontractors who have a need for the information for the performance of work under this contract unless such disclosure is specifically authorized in writing by the Water Authority and City.

(c) Security plan. If requested by the Contract Manager, Contractor shall prepare a security plan to assure that information obtained from the Water Authority and City or as a consequence of the performance of work is not used for any unauthorized purpose or disclosed to unauthorized persons. Contractor shall advise the Water Authority and City of any request for disclosure of information or of any actual or potential disclosure of information.

(d) Survival. Contractor's obligations under this paragraph shall survive the termination of this contract.

16. PROHIBITED INTEREST:

No official or employee of the Water Authority or City who is authorized in such capacity on behalf of the Water Authority or City to negotiate, make, accept, or approve, or take part in negotiating, making, accepting, or approving this contract, shall become directly or indirectly interested in this contract or in any part thereof. No officer or employee of the Water Authority or City who is authorized in such capacity and on behalf of the Water Authority or City to

exercise any executive, supervisory, or similar functions in connection with the performance of this contract shall become directly or indirectly interested personally in this contract or any part thereof.

17. CONFLICT OF INTEREST:

(a) Local Conflict of Interest Code Compliance. The Water Authority has determined, based on the scope of the services to be provided by Contractor under this contract, that this contract does not confer on Contractor or any of Contractor's employees the status of a "designated employee" or "Consultant" of the Water Authority for the purposes of the Water Authority's Local Conflict of Interest Code and the California Political Reform Act. This contract does not require or permit Contractor to make a governmental decision as specified in 2 Cal. Code of Regs. § 18701, subdiv. (a)(2)(A), or serve in a staff capacity as specified in 2 Cal. Code of Regs. § 18701, subdiv. (a)(2)(B).

(b) City Conflict Provisions: The Contractor is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including but not limited to California Government Code sections 1090, et. seq. and 81000, et. seq., and the City of San Diego Ethics Ordinance, codified in the San Diego Municipal Code at sections 27.3501 to 27.3595.

If, in performing the Professional Services set forth in this Contract, the Contractor makes, or participates in, a "governmental decision" as described in Title 2, section 18701(a)(2) of the California Code of Regulations, or performs the same or substantially all the same duties for the City that would otherwise be performed by a City employee holding a position specified in the Water Department's conflict of interest code, the Contractor shall be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing the Contractor's relevant financial interests.

If the City requires the Contractor to file a statement of economic interests as a result of the Professional Services performed, the Contractor shall be considered a "City Official" subject to the provisions of the City of San Diego Ethics Ordinance, including the prohibition against lobbying the City for one year following the termination of this Contract.

(c) Disqualification. Contractor shall not make or participate in making or in any way attempt to use Contractor's position to influence a governmental decision in which Contractor knows or has reason to know Contractor has a direct or indirect financial interest other than the compensation promised by this contract. Contractor will not have such interest during the term of this contract. Contractor will immediately advise the General Counsel of the Water Authority and City if Contractor learns of a financial interest of Contractor's during the term of this contract. If Contractor's participation in another Water Authority or City project would create an actual or potential conflict of interest, in the opinion of the Water Authority and City, the Water Authority and City may disqualify Contractor from participation in such other project during the term of this Contract.

18. MUTUAL INDEMNIFICATION:

To the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782.8), the Water Authority, City and Contractor shall defend (with legal counsel reasonably acceptable to the Water Authority and the City), indemnify and hold harmless each other and their respective officers, agents, departments, officials, representatives and employees from and against all claims, losses, costs, damages, injuries, expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of that party, its employees, agents, Subcontractor(s), anyone directly or indirectly employed by that party, or anyone that they control, in performing under this Contract.

19. INSURANCE:

(a) Requirement. Contractor shall procure and maintain during the period of performance of this contract and for 24 months following completion, insurance from insurance companies authorized to do business in the State of California, as set forth in this section. These policies shall be primary insurance as to the Water Authority and City so that any other coverage held by the Water Authority and City shall not contribute to any loss under Contractor's insurance.

Automobile liability: (with coverage at least as broad as ISO form CA 00 01 10 01, for "any auto") coverage in an amount not less than \$1,000,000 per accident for personal injury, including death, and property damage.

(b) Endorsements. The insurance policies shall be endorsed as follows:

For the automobile liability insurance, the Water Authority and City (including its directors, officers, employees, and agents) shall be named as additional insured, and the policy shall be endorsed with a form equivalent to ISO form CG 20 10 10 93, that contain the provisions required by this contract.

Contractor's insurance is primary to any other insurance available to the Water Authority and City with respect to any claim arising out of this Contract. Any insurance maintained by the Water Authority and City shall be excess of the Contractor's insurance and shall not contribute with it. The Contractor's endorsement of insurance shall include a waiver of any rights of subrogation against the Water Authority and City, and its directors, officers, employees and agents.

Contractor's insurance will not be canceled, limited, amended, reduced in coverage amount, or allowed to expire without renewal until after 30 days' written notice has been given to the Water Authority and City, or after 10 days' written notice in the case of cancellation for non-payment of premium.

(c) Qualifications of Insurer. The insurance shall be provided by an acceptable insurance provider, as determined by the Water Authority and City, which satisfies the following minimum

requirements: An insurance carrier admitted to do business in California and maintaining an agent for process within the state. Such insurance carrier shall maintain a current A.M. Best rating classification of "A-" or better and a financial size of "\$10 million to \$24 million (Class V) or better", or A Lloyds of London program provided by syndicates of Lloyds of London and other London insurance carriers, providing all participants are qualified to do business in California and the policy provides for an agent for process in the state.

(d) Provision of Insurance Prior to Commencement of Services. Before commencing any services, Contractor shall furnish certificates of insurance and endorsements affecting coverage on forms provided by Water Authority and City, or on equivalent ISO forms that contain provisions required by this contract.

20. ACCIDENT REPORTS:

Contractor shall immediately report (as soon as feasible, but not more than 24 hours) to the Water Authority and City any accident or other occurrence causing injury to persons or property during the performance of this Contract. If required by the Water Authority's Risk Manager, the report shall be made in writing and shall include, at a minimum: (a) the names, addresses, and telephone numbers of the persons involved, (b) the names, addresses and telephone numbers of any known witnesses, (c) the date, time and description of the accident or other occurrence.

21. COVENANT AGAINST CONTINGENT FEES:

Contractor agrees that its firm has not employed or retained any company or person, other than a bona fide employee working for Contractor, to solicit or secure this contract, and that Contractor has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this contract. For breach or violation of this provision, the Water Authority shall have the right to terminate this contract without liability, or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fees, gift, or contingent fee.

22. TERMINATION OR ABANDONMENT:

(a) Water Authority's and City's Rights. The Water Authority and City has the right to terminate or abandon any portion or all of the work by giving 10 days' written notice. Upon receipt of a notice of termination, Contractor shall perform no further work except as specified in the notice. Before the date of termination, Contractor shall deliver to Water Authority and City all work product, whether completed or not, as of the date of termination and not otherwise previously delivered. The Water Authority and City shall pay Contractor for services performed in accordance with this contract before the date of termination. If this contract provides for payment of a lump sum for all services or by task and termination occurs before completion of the work or any defined task which according to the performance schedule was commenced before the notice of termination, the fee for services performed shall be based on an amount mutually agreed to by the Water Authority, City, and Contractor for the portion of work completed in conformance with this contract before the date of termination. In addition, the

Water Authority and City will reimburse Contractor for authorized expenses incurred and not previously reimbursed. The Water Authority and City shall not be liable for any fees or costs associated for the termination or abandonment except for the fees, and reimbursement of authorized expenses, payable pursuant to this section.

(b) Contractor's Rights. Contractor, if Contractor is not in default or breach, may terminate Contractor's obligation to provide further services under this contract upon 30 days' written notice only in the event of a material default by the Water Authority and City, which default has not been cured within 30 days following the written notice.

23. SUCCESSORS OR ASSIGNS:

All terms, conditions, and provisions of this contract shall apply to and bind the respective heirs, executors, administrators, successors, and assigns of the parties. Nothing in this paragraph is intended to affect the limitation on assignment.

24. DAMAGE OR LOSS OF EQUIPMENT OR FACILITIES:

(a) General Obligation. Contractor shall pay to the Water Authority and City the replacement cost of any equipment or repair cost of any facilities provided by the Water Authority and City for Contractor's use in performance of services that is lost or damaged by Contractor or Contractor's officers, employees, agents or subcontractors.

(b) Keys. During the term of the contract, Contractor may be issued keys to Water Authority and City facilities in order to perform the scope of work. Keys shall not be loaned, duplicated, or given to anyone not authorized to have the keys. Contractor will sign for each key and each key will be returned to the project manager when access to that area is no longer authorized, or at the end of the contract term, whichever is applicable. Should keys become lost or stolen, Contractor shall immediately notify the Contract Manager. A charge will be assessed for all expenses incurred by the Water Authority and City, including the replacement of locks, lock cores, keys, and other materials necessary to ensure the Water Authority and City security levels are returned to the same level existing prior to the loss of the key(s). The cost of replacing locks may be as much as \$40,000.

25. ELECTRONIC COMMUNICATIONS:

During the course of this contract, communications may occur through sending, receiving or exchanging electronic versions of documents and e-mails using commercially available computer software and Internet access. Contractor, Water Authority, and City acknowledge that the Internet is occasionally victimized by the creation and dissemination of so-called viruses, or similar destructive electronic programs. Contractor, Water Authority, and City view the issues raised by these viruses seriously and have invested in document and e-mail scanning software that identify and reject files containing known viruses. Contractor agrees to update its system with the software vendor's most current releases at regular intervals. Because of the virus scanning software, the respective computer systems of the parties may occasionally reject a communication. The parties acknowledge that this occurrence is to be expected as part of the

ordinary course of business. Because the virus protection industry is generally one or two steps behind new viruses, neither party can guarantee that its respective communications and documents will be virus free. Occasionally, a virus will escape and go undetected as it is passed from system to system. Although each party will use all reasonable efforts to assure that its communications are virus free, neither party warrants that its documents will be virus free. Each party agrees to advise the other if it discovers a virus in its respective system that may have been communicated to the other party.

26. LAWS AND VENUE:

This contract and disputes arising out of or relating to the contract or the parties' relationship are governed by the laws of the State of California. Any action or proceeding arising out of or relating to the contract or the parties' relationship shall be brought in a state or federal court situated in the County of San Diego, State of California.

27. ADMINISTRATION:

(a) Contractor's principal place of business and agent for service of process. Contractor's principal place of business is 3860 West Land Park Drive, Sacramento, CA 95822. Contractor's agent for service of process is Donald H. Babbitt.

(b) Water Authority's Representative. The Water Authority's representative for administration of this contract is Jeff Shoaf, who is the designated Contract Manager. The Water Authority may change the Contract Manager at any time upon notice to the Contractor.

(c) Contractor's Representative. The Contractor's representative for administration of this contract is Donald H. Babbitt, who is designated as the Project Manager. The Contractor may change the Project Manager upon written notice to and approval by the Contract Manager.

(d) Notices. Any notice or instrument required to be given or delivered by law or this contract shall be effective upon receipt thereof and shall be by personal service or delivered by depositing the same in any United States Post Office, registered or certified, postage prepaid, addressed to:

San Diego County Water Authority
4677 Overland Avenue
San Diego, CA 92123-1233
Attn: John A. Economides, Director of Engineering

City of San Diego
600 B Street, Suite 700
San Diego, CA 92101
Attn: Marsi A. Steirer, Deputy Water Department Director

Donald H. Babbitt
3860 West Land Park Drive
Sacramento, CA 95822

Either party may change the address or identity of the person for notices under this paragraph by written notice to the other delivered in accordance with this paragraph.

(e) Routine Administrative Communications. Routine administrative communication required to be in writing may be by personal delivery, mail, facsimile transmission or electronic mail as agreed between the Contractor and Contract Manager.

28. INTEGRATION AND MODIFICATION:

This contract represents the entire understanding of the Water Authority, City, and Contractor as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This contract may not be modified, amended, or altered except in writing signed by the Water Authority, City, and Contractor.

29. ADVICE OF COUNSEL:

The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms, and conditions of this contract, and that the decision of whether or not to seek the advice of counsel with respect to this contract is a decision which is the sole responsibility of each of the parties hereto. This contract shall not be construed in favor or against either party by reason of the extent to which each party participated in the drafting of the contract.

30. INDEPENDENT REVIEW:

Each party hereto declares and represents that in entering this contract it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each party further declares and represents that this contract is being made without reliance upon any statement or representation not contained herein of any other party, or any representative, agent, or attorney of any other party.

31. TIME:

Time is of the essence in this contract. Any reference to days means calendar days unless otherwise specifically stated.

32. ASSIGNMENT OF ANTI-TRUST CLAIMS:

The Contractor offers and agrees to assign to the Water Authority and City all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act [Chapter 2 (commencing with § 16700) of Part 2 of Division 7 of the Business and Professions Code], arising from purchases of goods, services, or materials pursuant to the contract. This assignment shall become effective at the time the Water Authority and City tenders final payment to Contractor, without further acknowledgment by the parties. The Contractor shall have the rights set forth in Sections 4553 and 4554 of the Government Code.

33. TAXES:

The Contractor shall pay all applicable federal, state, and local excise, sales, consumer use, and other similar taxes required by law for the execution of the work.

34. SIGNATURES:

The individuals executing this contract represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

IN WITNESS WHEREOF, the parties have executed this contract on the following date.

DATED: _____, 2007

San Diego County Water Authority

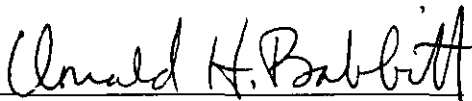
City of San Diego

By: _____

Paul A. Lanspery
Deputy General Manager

By: _____

Donald H. Babbitt

By: 
Donald H. Babbitt

Approved as to form:

DANIEL S. HENTSCHKE
General Counsel
San Diego County Water Authority

RAY PALMUCCI
Deputy City Attorney
City of San Diego

ATTACHMENT A

SCOPE OF WORK

TASK 1.0 GENERAL

- 1.1 An Agreement Between the San Diego County Water Authority and the City of San Diego for the Emergency Storage Project provides for the Project Review and Coordination Panel for the San Vicente Dam Raise and Recreational Facilities. The Panel consists of five members: one representative member appointed by the General Manager of Water Authority; one representative member appointed by the Chief Operating Officer of the City of San Diego; and three independent members, one who is a professional engineer, one who is experienced in public finance, and one who is experienced in the administration of contracts for water resource projects. These three members shall be mutually agreed to by the General Manager of Water Authority and the Chief Operating Officer of the City, or their designees. This Contract is for the member who is an independent professional engineer.

TASK 2.0 SCOPE OF WORK TASKS

- 2.1 The scope of work included in this Contract shall be in accordance with the Agreement between the Water Authority and the City of San Diego for the Emergency Storage Project, Appendix F Dispute Resolution (Attachment 1), and includes, but is not limited to the following:
- 2.1.1 Attend regular meetings at the project site in order for Panel to be kept informed of the project developments. Regular site visits shall be a minimum of four hours per visit and no less than one visit every six months. Depending on the progress of the work, the frequency of the visits may be changed as agreed among the Water Authority, City and Panel.
 - 2.1.2 Provide prompt and orderly means of resolving disputes between the staffs of City and Water Authority in connection with the design, construction, and the operation and maintenance of the Project.
 - 2.1.3 Provide consultation, review, and resolution of disputes between the staffs of the City and Water Authority, as designated in Articles 2, 3, 4, 5, 6, 8, 9, 10, 11, and 16 of the Agreement between the Water Authority and the City for the ESP (Attachment 1) on all matters relating to the design and construction of Project and the operation, maintenance, repair, and replacement of the Project including, but not limited to the following:
 - 2.1.3.1 Design and construction of the Project;
 - 2.1.3.2 Documentation and review of any operation and maintenance costs; seasonal storage credits; accounts of water in storage of each party;

evaporative, seepage, leakage, spill and other water losses; loss of storage capacity such as by sedimentation; periodic dam safety inspections; replacement of capital components of the Project; and implementation of jointly funded improvements of the Project.

- 2.2 Submission of dispute for resolution shall be to each member of the Panel and on the other party by certified mail or overnight delivery. The other party may submit a written response to the submission not more than ten calendar days following receipt of the submission. Any response shall be served on each member of the Panel and the other party by certified mail or overnight delivery.
- 2.3 In the event of an absent Panel member, a letter shall be sent with any proposed action by registered or certified mail, postage prepaid, return receipt requested. If no written protest from the absent member is received by the Chair within 30 calendar days of the date of receipt of the letter, the decision shall be final.
- 2.4 The meeting of the Panel to consider the resolution of a dispute submitted by one of the other parties shall be informal and shall be intended to facilitate the open discussion of the dispute. The Panel may request a presentation by the parties regarding the dispute and may request additional information from the parties or from other persons to assist the Panel in making a recommendation to resolve the dispute.
- 2.5 Upon conclusion of the meeting (which may be continued from time to time) and the receipt of all required information regarding a dispute submitted to the Panel, the Panel shall provide each party with its actions regarding the resolution of each dispute. Provide all actions of the Panel in writing within seven calendar days of the conclusion of the meeting to each member of the Panel, Water Authority, and City. All actions by the Panel shall be by majority vote.

ATTACHMENT B

PAYMENT AND FEE SCHEDULE

1. Total Contract Amount: The total contract amount shall not exceed \$49,500, including labor and direct expenses for performing the tasks as described in Attachment A - Scope of Work.
2. Billing Rate: The billing rate is \$150 per hour for the time spent on performing tasks as described in Attachment A, Scope of Work. Travel time from the Contractor's offices to and from the offices of Water Authority and City, and from the Contractor's offices to and from the job site is not allowable compensable time.
3. Direct Expenses: Compensation for other direct costs incurred by Contractor shall include costs as listed in Table B-1. Water Authority and City will not pay a mark-up for other direct costs.
4. Rate Increases: The Water Authority and City must approve rate increases by Contractor during the duration of this Contract in advance. Labor rate adjustments will not change the not-to-exceed fee for the project. Contractor shall notify the Water Authority in writing 14-calendar days prior for requests of labor rate adjustments for Contractor. The hourly rate increase for Contractor listed in Paragraph 2, Billing Rate shall not exceed 3.0 percent per annum.
5. Invoices: Contractor shall bill Water Authority monthly or within thirty days after each Panel meeting, whichever occurs first. Billing shall be for time and other direct costs as described in Table B-1. All receipts for expenses shall be included in billing statements. Expense items without receipts shall not be reimbursed. Meal and lodging receipts shall be itemized, and alcohol consumption and personal expenses shall not be reimbursed. All expenses shall be billed at cost.

Table B-1
Other Direct Expenses (Job-related only)

Items	Unit Cost
A	Travel. Travel requests must be submitted in advance of travel. Only expenses necessary for furthering the interests of the Water Authority and which maximize the purchasing value of public funds will be approved.
1.	Airfare - Coach or economy class except when coach or economy seats are not available. Itemized receipts are required.
2.	Lodging - Hotel/motel reimbursement inclusive of hotel and sales taxes. Itemized receipts are required.
3.	Parking, mileage, tolls and taxis (if less costly than rented cars) are reimbursable. Itemized receipts are required.
4.	Auto Rental - Mid-size sedan or smaller unless five or more people are to be transported. Receipts are required. Rental car fuel is reimbursable.
5.	Meals - Itemized receipts are required. Alcoholic beverages are not reimbursable.
B	Mileage
C	Printing, faxing, and copying at job sites
D	Postage and overnight delivery
E	Telephone
F	Other ODC items as approved by the Water Authority in writing.

ATTACHMENT C

PERFORMANCE SCHEDULE

Contractor shall perform such services in a prompt and timely manner in accordance with Attachment A, Scope of Work. Services shall commence upon issue of Notice to Proceed.

PROFESSIONAL SERVICES CONTRACT

1. PARTIES:

The parties to this contract are the SAN DIEGO COUNTY WATER AUTHORITY, a county water authority, (the Water Authority), CITY OF SAN DIEGO, a municipal corporation (City), and MARTIN DENSE, a sole proprietor (Contractor).

2. SCOPE OF SERVICES:

The services to be provided by Contractor for the Project Review and Coordination Panel for the San Vicente Dam Raise and Recreational Facilities are described in Attachment A.

3. PAYMENT:

(a) *Payment for services.* The Water Authority and City shall pay for services performed in accordance with this contract according to the payment and fee schedule contained in Attachment B.

(b) *Reimbursement of expenses.* Contractor will be reimbursed for actual, reasonable and necessary expenses incurred in the performance of services in accordance with the expense reimbursement schedule included in Attachment B.

(c) *Maximum payment.* The maximum payment under this contract for services and, if authorized, reimbursement of expenses, shall not exceed \$49,500.

(d) *Invoices.* All invoices for services will be submitted according to Attachment B. The Water Authority generally will process and pay bills within 30 days from receipt. Each bill shall include an invoice showing the amount of services rendered during the billing period and the fee for such services. If reimbursement of expenses is authorized, Contractor shall submit monthly invoices for such expenses, including full documentation of each expense incurred. Payments are subject to a final audit upon completion of services or other termination of this contract.

(e) *Audit of Records.* Contractor shall maintain complete and accurate records of all payrolls, expenditures, disbursements and other cost items charged to the Water Authority and City or establishing the basis for an invoice, for a minimum of four years from the date of final payment to Contractor. All such records shall be clearly identifiable. Contractor shall allow Water Authority and City representative to inspect, examine, copy and audit such records during regular business hours upon 24 hours' notice.

4. TIME FOR PERFORMANCE:

(a) Contractor will complete all services by December 31, 2014.

(b) *Extension of time for unforeseen circumstances.* In the event that the Contractor is unable to meet the completion date or schedule of services, if any, due to circumstances beyond Contractor's reasonable control, such as war, riots, strikes, lockouts, work slow down or

stoppage, except strikes, lockouts, or work slow down or stoppage of Contractor's employees or subcontractors, acts of God, such as floods or earthquakes, and electrical blackouts or brownouts, Contractor shall inform the Contract Manager of the additional time required to perform the work and the Contract Manager may adjust the schedule.

5. STANDARD OF PERFORMANCE:

Contractor's services shall be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of Contractor's profession currently practicing under similar conditions. Whenever the scope of work requires or permits approval by the Water Authority and City, it is understood to be approval solely for the purposes of conforming to the requirements of the scope of work and not acceptance of any professional or other responsibility for the work. Such approval does not relieve the Contractor of responsibility for complying with the standard of performance or laws, regulations, industry standards, or from liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of Contractor or its subcontractors. By delivery of completed work, Contractor certifies that the work conforms to the requirements of this contract and all applicable federal, state and local laws. If Contractor is retained to perform services requiring a license, certification, registration or other similar requirement under California law, Contractor shall maintain that license, certification, registration or other similar requirement throughout the term of this Contract.

6. INDEPENDENT CONTRACTOR:

Contractor is an independent contractor. Neither Contractor nor any of Contractor's officers, employees, agents or subcontractors, if any, is an employee of the Water Authority or City by virtue of this contract or performance of any work under this contract.

7. ASSIGNMENT:

Contractor shall not assign or transfer voluntarily or involuntarily any of its rights, duties, or obligations under this contract without the express written consent of the Water Authority and City in each instance.

8. SUBCONTRACTORS:

Contractor will perform the work personally or through Contractor's employees. Contractor may subcontract work only upon prior approval of the Water Authority and in compliance with provisions of the Water Authority's Small Contractor Outreach and Opportunities Program, if the Water Authority determines that the program provisions are applicable.

9. CONTRACTOR'S EMPLOYEES:

(a) *Immigration Reform and Control Act of 1986.* Contractor is aware of the requirements of the Immigration Reform and Control Act of 1986 and shall comply with those requirements,

including, but not limited to, verifying the eligibility for employment of all of Contractor's agents, employees, subcontractors and Contractors that are included in this contract.

(b) **Limitation of Water Authority and City Liability.** The payment made to Contractor pursuant to this contract shall be the full and complete compensation to which Contractor and Contractor's officers, employees, agents and subcontractors are entitled for performance of any work under this contract. Neither Contractor nor Contractor's officers or employees are entitled to any salary or wages, or retirement, health, leave or other fringe benefits applicable to employees of the Water Authority and City. The Water Authority and City will not make any federal or state tax withholdings on behalf of Contractor. The Water Authority and City shall not be required to pay any workers' compensation insurance on behalf of Contractor.

(c) **Indemnification for Employee Payments.** Contractor agrees to defend and indemnify the Water Authority and City for any obligation, claim, suit or demand for tax, retirement contribution including any contribution to the Public Employees Retirement System (PERS), social security, salary or wages, overtime payment, or workers' compensation payment which the Water Authority and City may be required to make on behalf of Contractor or any employee of Contractor, or any employee of Contractor construed to be an employee of the Water Authority and City, for work done under this contract. This is a continuing obligation that survives the termination of this contract.

10. FAIR EMPLOYMENT PRACTICES:

(a) **Administrative Code Provisions.** Contractor acknowledges and agrees to abide by the following provision of the Water Authority Administrative Code Section 2.24.010 that states:

“(a) It is the policy of the Authority to protect and safeguard the right and opportunity of all persons to seek, obtain, and hold employment without discrimination or abridgment on account of race, color, ethnicity, national origin, ancestry, religion, creed, veteran status, physical disability, mental disability, medical condition, marital status, sex, sexual orientation, age, or other status protected from workplace discrimination by state or federal law. Authority officers, employees and Contractors shall not knowingly deny an Authority opportunity or benefit, discriminate against or harass, any Authority employee, applicant for employment, contractor, vendor, or recipient of Authority services on account of the person's race, color, ethnicity, national origin, ancestry, religion, creed, veteran status, physical disability, mental disability, medical condition, marital status, sex, sexual orientation, age, or other status protected from workplace discrimination by state or federal law. Authority officers, employees and Contractors shall not knowingly give preferential treatment to any applicant for employment, bidder, contractor, vendor, or recipient of Authority services on the basis of race, color, ethnicity, national origin, ancestry, religion, creed, physical disability, mental disability, medical condition, marital status, sex, or sexual orientation.

“(b) This section shall be interpreted in a manner that is consistent with the California and United States Constitutions and applicable state and federal statutes governing workplace discrimination. The terms used in this section shall have the same meaning as defined in state statutes governing the same subject matter.

“(c) Nothing in this section shall be interpreted as prohibiting bona fide occupational qualifications consistent with applicable state and federal law and reasonably necessary to the normal operation of Authority employment or contracting. Nothing in this section shall be interpreted as prohibiting regulations and policies to prevent nepotism or conflicts of interest.

“(d) Nothing in this section shall be interpreted as prohibiting action taken to establish or maintain eligibility for any federal program, where ineligibility would result in a loss of federal funds to the Authority.”

(b) Civil Rights Act. Contractor agrees to comply with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, the Americans with Disabilities Act of 1990, any other applicable federal and state laws and regulations hereinafter enacted, and the Water Authority's Small Contractor Outreach and Opportunities Program.

(c) Water Authority Discrimination/Harassment Policy. Contractor and its officers, employees, agents and subcontractors shall comply with the Water Authority's Discrimination/Harassment Prohibition Policy in performance of this contract.

(d) City Provisions. The Contractor shall comply with the City's Equal Opportunity Contracting Program Consultant Requirements. The Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. The Contractor shall provide equal opportunity in all employment practices. The Contractor shall ensure that its subcontractors comply with the City's Equal Opportunity Contracting Program Consultant Requirements. Nothing in this paragraph shall be interpreted to hold the Contractor liable for any discriminatory practice of its subcontractors.

The Contractor shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors or suppliers. The Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. The Contractor understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, and other sanctions. This language shall be in contracts between the Contractor and any subcontractors, vendors and suppliers.

Upon the City's request, the Contractor agrees to provide to the City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that the Contractor has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by the Contractor for each subcontract or supply contract. The Contractor further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination in Contracting Ordinance [San Diego Municipal Code sections 22.3501-22.3517.] The Contractor understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in remedies being ordered against the Contractor up to and including contract termination, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. The Contractor further understands and agrees that the procedures, remedies and sanctions provided for in the Nondiscrimination Ordinance apply only to violations of said Nondiscrimination Ordinance.

(e) Indemnification. To the fullest extent permitted by law and without limitation by the provisions of Section 19 relating to insurance, the Contractor shall also indemnify, defend and hold harmless the Water Authority and City, and its directors, officers, employees and agents from and against all liability (including without limitation all claims, damages, penalties, fines, and judgments, associated investigation and administrative expenses, and defense costs, including but not limited to reasonable attorneys' fees, court costs, and costs of alternative dispute resolution) resulting from any claim of discrimination or harassment, including but not limited to sexual harassment, arising from the conduct of the Contractor or any of the Contractor's officers, employees, agents, licensees, or subcontractors. In the event of a discrimination or harassment complaint against any employee, agent, licensee or subcontractor of the Contractor or its subcontractors, the Contractor shall take immediate and appropriate action in response to such complaint, including, but not limited to termination or appropriate discipline of any responsible employee, agent, licensee or subcontractor. The provisions of this Section survive completion of the services or termination of the Contract.

11. WORKPLACE CONDUCT AND BEHAVIOR:

(a) Contractor and Contractor's officers, employees, agents and subcontractors shall comply with the Water Authority's Substance-free Work Place Policy, Information and Communications Systems Policy, and other rules and regulations governing work place safety, conduct, and behavior, for any portion of the work performed on the premises of the Water Authority or using Water Authority facilities or equipment.

(b) Contractor and Contractor's officers, employees, agents and subcontractors shall comply with the City's Drug-Free Workplace requirements set forth in Council Policy 100-17, adopted by San Diego Resolution R-277952.

12. OWNERSHIP OF WORK PRODUCT:

Upon delivery, the work product, including without limitation, all original reports, writings, recordings, drawings, files, and detailed calculations developed under this contract are the property of the Water Authority and City. Contractor agrees that all copyrights which arise from creation of the work pursuant to this contract shall be vested in the Water Authority and City and waives and relinquishes all claims to copyright or other intellectual property rights in favor of the Water Authority and City. Water Authority and City acknowledges that its use of the work product is limited to the purposes contemplated by the scope of work and that the Contractor makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the scope of work.

13. FORMAT OF DOCUMENTS:

Documents submitted to the Water Authority and City in electronic format shall be formatted according to specifications provided by the Water Authority and City, or if not otherwise specified, in Microsoft Word, Excel, PowerPoint or other Microsoft Suite (2003) format as appropriate for the particular work product or, if directed by the Contract Manager in Adobe Acrobat pdf format.

14. CHANGES IN WORK:

No payment for changed or additional work shall be made unless the changed or additional work has first been approved in writing by the Contract Manager and the parties have agreed upon the appropriate adjustment, if any, to the payment schedule and maximum payment amount for the changed or additional work. The Contract Manager may order changes or additions to the scope of work. Whether a change or addition to the scope of work is proposed by the Contractor or ordered by the Contract Manager, the parties shall in good faith negotiate an appropriate adjustment, if any, to the payment schedule and maximum payment for the changed or additional work. An approved change or addition, along with the payment adjustment, if any, will be effective upon an amendment to this contract executed by both parties. The amendment shall not render ineffective or invalidate unaffected portions of this contract. All changes in work that increase the amount of payment shall be subject to Section 4.04.040 of the Water Authority Administrative Code.

15. CONFIDENTIALITY:

(a) Confidential Nature of Information. Contractor shall treat all information obtained from the Water Authority and City in the performance of this contract as confidential and proprietary to the Water Authority and City. Contractor shall treat all records and work product prepared or maintained by Contractor in the performance of this contract as confidential.

(b) Limitation on use and disclosure. Contractor agrees that it will not use any information obtained as a consequence of the performance of work for any purpose other than fulfillment of Contractor's scope of work. Contractor will not disclose any information prepared for the Water Authority and City, or obtained from the Water Authority and City or obtained as a consequence of the performance of work to any person other than the Water Authority and City, or its own employees, agents or subcontractors who have a need for the information for the performance of work under this contract unless such disclosure is specifically authorized in writing by the Water Authority and City.

(c) Security plan. If requested by the Contract Manager, Contractor shall prepare a security plan to assure that information obtained from the Water Authority and City or as a consequence of the performance of work is not used for any unauthorized purpose or disclosed to unauthorized persons. Contractor shall advise the Water Authority and City of any request for disclosure of information or of any actual or potential disclosure of information.

(d) Survival. Contractor's obligations under this paragraph shall survive the termination of this contract.

16. PROHIBITED INTEREST:

No official or employee of the Water Authority or City who is authorized in such capacity on behalf of the Water Authority or City to negotiate, make, accept, or approve, or take part in negotiating, making, accepting, or approving this contract, shall become directly or indirectly interested in this contract or in any part thereof. No officer or employee of the Water Authority or City who is authorized in such capacity and on behalf of the Water Authority or City to

exercise any executive, supervisory, or similar functions in connection with the performance of this contract shall become directly or indirectly interested personally in this contract or any part thereof.

17. CONFLICT OF INTEREST:

(a) Local Conflict of Interest Code Compliance. The Water Authority has determined, based on the scope of the services to be provided by Contractor under this contract, that this contract does not confer on Contractor or any of Contractor's employees the status of a "designated employee" or "Consultant" of the Water Authority for the purposes of the Water Authority's Local Conflict of Interest Code and the California Political Reform Act. This contract does not require or permit Contractor to make a governmental decision as specified in 2 Cal. Code of Regs. § 18701, subdiv. (a)(2)(A), or serve in a staff capacity as specified in 2 Cal. Code of Regs. § 18701, subdiv. (a)(2)(B).

(b) City Conflict Provisions: The Contractor is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including but not limited to California Government Code sections 1090, et. seq. and 81000, et. seq., and the City of San Diego Ethics Ordinance, codified in the San Diego Municipal Code at sections 27.3501 to 27.3595.

If, in performing the Professional Services set forth in this Contract, the Contractor makes, or participates in, a "governmental decision" as described in Title 2, section 18701(a)(2) of the California Code of Regulations, or performs the same or substantially all the same duties for the City that would otherwise be performed by a City employee holding a position specified in the Water Department's conflict of interest code, the Contractor shall be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing the Contractor's relevant financial interests.

If the City requires the Contractor to file a statement of economic interests as a result of the Professional Services performed, the Contractor shall be considered a "City Official" subject to the provisions of the City of San Diego Ethics Ordinance, including the prohibition against lobbying the City for one year following the termination of this Contract.

(c) Disqualification. Contractor shall not make or participate in making or in any way attempt to use Contractor's position to influence a governmental decision in which Contractor knows or has reason to know Contractor has a direct or indirect financial interest other than the compensation promised by this contract. Contractor will not have such interest during the term of this contract. Contractor will immediately advise the General Counsel of the Water Authority and City if Contractor learns of a financial interest of Contractor's during the term of this contract. If Contractor's participation in another Water Authority or City project would create an actual or potential conflict of interest, in the opinion of the Water Authority and City, the Water Authority and City may disqualify Contractor from participation in such other project during the term of this Contract.

18. MUTUAL INDEMNIFICATION:

To the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782.8), the Water Authority, City and Contractor shall defend (with legal counsel reasonably acceptable to the Water Authority and the City), indemnify and hold harmless each other and their respective officers, agents, departments, officials, representatives and employees from and against all claims, losses, costs, damages, injuries, expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of that party, its employees, agents, Subcontractor(s), anyone directly or indirectly employed by that party, or anyone that they control, in performing under this Contract.

19. INSURANCE:

(a) Requirement. Contractor shall procure and maintain during the period of performance of this contract and for 24 months following completion, insurance from insurance companies authorized to do business in the State of California, as set forth in this section. These policies shall be primary insurance as to the Water Authority and City so that any other coverage held by the Water Authority and City shall not contribute to any loss under Contractor's insurance.

Automobile liability: (with coverage at least as broad as ISO form CA 00 01 10 01, for "any auto") coverage in an amount not less than \$1,000,000 per accident for personal injury, including death, and property damage.

(b) Endorsements. The insurance policies shall be endorsed as follows:

For the automobile liability insurance, the Water Authority and City (including its directors, officers, employees, and agents) shall be named as additional insured, and the policy shall be endorsed with a form equivalent to ISO form CG 20 10 10 93, that contain the provisions required by this contract.

Contractor's insurance is primary to any other insurance available to the Water Authority and City with respect to any claim arising out of this Contract. Any insurance maintained by the Water Authority and City shall be excess of the Contractor's insurance and shall not contribute with it. The Contractor's endorsement of insurance shall include a waiver of any rights of subrogation against the Water Authority and City, and its directors, officers, employees and agents.

Contractor's insurance will not be canceled, limited, amended, reduced in coverage amount, or allowed to expire without renewal until after 30 days' written notice has been given to the Water Authority and City, or after 10 days' written notice in the case of cancellation for non-payment of premium.

(c) Qualifications of Insurer. The insurance shall be provided by an acceptable insurance provider, as determined by the Water Authority and City, which satisfies the following minimum

requirements: An insurance carrier admitted to do business in California and maintaining an agent for process within the state. Such insurance carrier shall maintain a current A.M. Best rating classification of "A-" or better and a financial size of "\$10 million to \$24 million (Class V) or better", or A Lloyds of London program provided by syndicates of Lloyds of London and other London insurance carriers, providing all participants are qualified to do business in California and the policy provides for an agent for process in the state.

(d) Provision of Insurance Prior to Commencement of Services. Before commencing any services, Contractor shall furnish certificates of insurance and endorsements affecting coverage on forms provided by Water Authority and City, or on equivalent ISO forms that contain provisions required by this contract.

20. ACCIDENT REPORTS:

Contractor shall immediately report (as soon as feasible, but not more than 24 hours) to the Water Authority and City any accident or other occurrence causing injury to persons or property during the performance of this Contract. If required by the Water Authority's Risk Manager, the report shall be made in writing and shall include, at a minimum: (a) the names, addresses, and telephone numbers of the persons involved, (b) the names, addresses and telephone numbers of any known witnesses, (c) the date, time and description of the accident or other occurrence.

21. COVENANT AGAINST CONTINGENT FEES:

Contractor agrees that its firm has not employed or retained any company or person, other than a bona fide employee working for Contractor, to solicit or secure this contract, and that Contractor has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this contract. For breach or violation of this provision, the Water Authority shall have the right to terminate this contract without liability, or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fees, gift, or contingent fee.

22. TERMINATION OR ABANDONMENT:

(a) Water Authority's and City's Rights. The Water Authority and City has the right to terminate or abandon any portion or all of the work by giving 10 days' written notice. Upon receipt of a notice of termination, Contractor shall perform no further work except as specified in the notice. Before the date of termination, Contractor shall deliver to Water Authority and City all work product, whether completed or not, as of the date of termination and not otherwise previously delivered. The Water Authority and City shall pay Contractor for services performed in accordance with this contract before the date of termination. If this contract provides for payment of a lump sum for all services or by task and termination occurs before completion of the work or any defined task which according to the performance schedule was commenced before the notice of termination, the fee for services performed shall be based on an amount mutually agreed to by the Water Authority, City, and Contractor for the portion of work completed in conformance with this contract before the date of termination. In addition, the

Water Authority and City will reimburse Contractor for authorized expenses incurred and not previously reimbursed. The Water Authority and City shall not be liable for any fees or costs associated for the termination or abandonment except for the fees, and reimbursement of authorized expenses, payable pursuant to this section.

(b) Contractor's Rights. Contractor, if Contractor is not in default or breach, may terminate Contractor's obligation to provide further services under this contract upon 30 days' written notice only in the event of a material default by the Water Authority and City, which default has not been cured within 30 days following the written notice.

23. SUCCESSORS OR ASSIGNS:

All terms, conditions, and provisions of this contract shall apply to and bind the respective heirs, executors, administrators, successors, and assigns of the parties. Nothing in this paragraph is intended to affect the limitation on assignment.

24. DAMAGE OR LOSS OF EQUIPMENT OR FACILITIES:

(a) General Obligation. Contractor shall pay to the Water Authority and City the replacement cost of any equipment or repair cost of any facilities provided by the Water Authority and City for Contractor's use in performance of services that is lost or damaged by Contractor or Contractor's officers, employees, agents or subcontractors.

(b) Keys. During the term of the contract, Contractor may be issued keys to Water Authority and City facilities in order to perform the scope of work. Keys shall not be loaned, duplicated, or given to anyone not authorized to have the keys. Contractor will sign for each key and each key will be returned to the project manager when access to that area is no longer authorized, or at the end of the contract term, whichever is applicable. Should keys become lost or stolen, Contractor shall immediately notify the Contract Manager. A charge will be assessed for all expenses incurred by the Water Authority and City, including the replacement of locks, lock cores, keys, and other materials necessary to ensure the Water Authority and City security levels are returned to the same level existing prior to the loss of the key(s). The cost of replacing locks may be as much as \$40,000.

25. ELECTRONIC COMMUNICATIONS:

During the course of this contract, communications may occur through sending, receiving or exchanging electronic versions of documents and e-mails using commercially available computer software and Internet access. Contractor, Water Authority, and City acknowledge that the Internet is occasionally victimized by the creation and dissemination of so-called viruses, or similar destructive electronic programs. Contractor, Water Authority, and City view the issues raised by these viruses seriously and have invested in document and e-mail scanning software that identify and reject files containing known viruses. Contractor agrees to update its system with the software vendor's most current releases at regular intervals. Because of the virus scanning software, the respective computer systems of the parties may occasionally reject a communication. The parties acknowledge that this occurrence is to be expected as part of the

ordinary course of business. Because the virus protection industry is generally one or two steps behind new viruses, neither party can guarantee that its respective communications and documents will be virus free. Occasionally, a virus will escape and go undetected as it is passed from system to system. Although each party will use all reasonable efforts to assure that its communications are virus free, *neither party warrants that its documents will be virus free.* Each party agrees to advise the other if it discovers a virus in its respective system that may have been communicated to the other party.

26. LAWS AND VENUE:

This contract and disputes arising out of or relating to the contract or the parties' relationship are governed by the laws of the State of California. Any action or proceeding arising out of or relating to the contract or the parties' relationship shall be brought in a state or federal court situated in the County of San Diego, State of California.

27. ADMINISTRATION:

(a) *Contractor's principal place of business and agent for service of process.* Contractor's principal place of business is 3230 Corte Valencia, Fairfield, CA 94534. Contractor's agent for service of process is Martin Dense.

(b) *Water Authority's Representative.* The Water Authority's representative for administration of this contract is Jeff Shoaf, who is the designated Contract Manager. The Water Authority may change the Contract Manager at any time upon notice to the Contractor.

(c) *Contractor's Representative.* The Contractor's representative for administration of this contract is Martin Dense, who is designated as the Project Manager. The Contractor may change the Project Manager upon written notice to and approval by the Contract Manager.

(d) *Notices.* Any notice or instrument required to be given or delivered by law or this contract shall be effective upon receipt thereof and shall be by personal service or delivered by depositing the same in any United States Post Office, registered or certified, postage prepaid, addressed to:

San Diego County Water Authority
4677 Overland Avenue
San Diego, CA 92123-1233
Attn: John A. Economides, Director of Engineering

City of San Diego
600 B Street, Suite 700
San Diego, CA 92101
Attn: Marsi A. Steirer, Deputy Water Department Director

Martin Dense
3230 Corte Valencia
Fairfield, CA 94534

Either party may change the address or identity of the person for notices under this paragraph by written notice to the other delivered in accordance with this paragraph.

(e) Routine Administrative Communications. Routine administrative communication required to be in writing may be by personal delivery, mail, facsimile transmission or electronic mail as agreed between the Contractor and Contract Manager.

28. INTEGRATION AND MODIFICATION:

This contract represents the entire understanding of the Water Authority, City, and Contractor as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This contract may not be modified, amended, or altered except in writing signed by the Water Authority, City, and Contractor.

29. ADVICE OF COUNSEL:

The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms, and conditions of this contract, and that the decision of whether or not to seek the advice of counsel with respect to this contract is a decision which is the sole responsibility of each of the parties hereto. This contract shall not be construed in favor or against either party by reason of the extent to which each party participated in the drafting of the contract.

30. INDEPENDENT REVIEW:

Each party hereto declares and represents that in entering this contract it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each party further declares and represents that this contract is being made without reliance upon any statement or representation not contained herein of any other party, or any representative, agent, or attorney of any other party.

31. TIME:

Time is of the essence in this contract. Any reference to days means calendar days unless otherwise specifically stated.

32. ASSIGNMENT OF ANTI-TRUST CLAIMS:

The Contractor offers and agrees to assign to the Water Authority and City all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act [Chapter 2 (commencing with § 16700) of Part 2 of Division 7 of the Business and Professions Code], arising from purchases of goods, services, or materials pursuant to the contract. This assignment shall become effective at the time the Water Authority and City tenders final payment to Contractor, without further acknowledgment by the parties. The Contractor shall have the rights set forth in Sections 4553 and 4554 of the Government Code.

33. TAXES:

The Contractor shall pay all applicable federal, state, and local excise, sales, consumer use, and other similar taxes required by law for the execution of the work.

34. SIGNATURES:

The individuals executing this contract represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

IN WITNESS WHEREOF, the parties have executed this contract on the following date.

DATED: _____, 2007

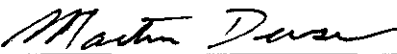
San Diego County Water Authority

City of San Diego

By: _____
Paul A. Lanspery
Deputy General Manager

By: _____

Martin Dense

By: 
Martin Dense

Approved as to form:

DANIEL S. HENTSCHKE
General Counsel
San Diego County Water Authority

RAY PALMUCCI
Deputy City Attorney
City of San Diego

ATTACHMENT A

SCOPE OF WORK

TASK 1.0 GENERAL

- 1.1 An Agreement Between the San Diego County Water Authority and the City of San Diego for the Emergency Storage Project provides for the Project Review and Coordination Panel for the San Vicente Dam Raise and Recreational Facilities. The Panel consists of five members: one representative member appointed by the General Manager of Water Authority; one representative member appointed by the Chief Operating Officer of the City of San Diego; and three independent members, one who is a professional engineer, one who is experienced in public finance, and one who is experienced in the administration of contracts for water resource projects. These three members shall be mutually agreed to by the General Manager of Water Authority and the Chief Operating Officer of the City, or their designees. This Contract is for the representative member who is experienced in public finance.

TASK 2.0 SCOPE OF WORK TASKS

- 2.1 The scope of work included in this Contract shall be in accordance with the Agreement between the Water Authority and the City of San Diego for the Emergency Storage Project, Appendix F Dispute Resolution (Attachment 1), and includes, but is not limited to the following:
- 2.1.1 Attend regular meetings at the project site in order for Panel to be kept informed of the project developments. Regular site visits shall be a minimum of four hours per visit and no less than one visit every six months. Depending on the progress of the work, the frequency of the visits may be changed as agreed among the Water Authority, City and Panel.
 - 2.1.2 Provide prompt and orderly means of resolving disputes between the staffs of City and Water Authority in connection with the design, construction, and the operation and maintenance of the Project.
 - 2.1.3 Provide consultation, review, and resolution of disputes between the staffs of the City and Water Authority, as designated in Articles 2, 3, 4, 5, 6, 8, 9, 10, 11, and 16 of the Agreement between the Water Authority and the City for the ESP (Attachment 1) on all matters relating to the design and construction of Project and the operation, maintenance, repair, and replacement of the Project including, but not limited to the following:
 - 2.1.3.1 Design and construction of the Project;
 - 2.1.3.2 Documentation and review of any operation and maintenance costs; seasonal storage credits; accounts of water in storage of each party;

evaporative, seepage, leakage, spill and other water losses; loss of storage capacity such as by sedimentation; periodic dam safety inspections; replacement of capital components of the Project; and implementation of jointly funded improvements of the Project.

- 2.2 Submission of dispute for resolution shall be to each member of the Panel and on the other party by certified mail or overnight delivery. The other party may submit a written response to the submission not more than ten calendar days following receipt of the submission. Any response shall be served on each member of the Panel and the other party by certified mail or overnight delivery.
- 2.3 In the event of an absent Panel member, a letter shall be sent with any proposed action by registered or certified mail, postage prepaid, return receipt requested. If no written protest from the absent member is received by the Chair within 30 calendar days of the date of receipt of the letter, the decision shall be final.
- 2.4 The meeting of the Panel to consider the resolution of a dispute submitted by one of the other parties shall be informal and shall be intended to facilitate the open discussion of the dispute. The Panel may request a presentation by the parties regarding the dispute and may request additional information from the parties or from other persons to assist the Panel in making a recommendation to resolve the dispute.
- 2.5 Upon conclusion of the meeting (which may be continued from time to time) and the receipt of all required information regarding a dispute submitted to the Panel, the Panel shall provide each party with its actions regarding the resolution of each dispute. Provide all actions of the Panel in writing within seven calendar days of the conclusion of the meeting to each member of the Panel, Water Authority, and City. All actions by the Panel shall be by majority vote.

ATTACHMENT B

PAYMENT AND FEE SCHEDULE

1. Total Contract Amount: The total contract amount shall not exceed \$49,500, including labor and direct expenses for performing the tasks as described in Attachment A - Scope of Work.
2. Billing Rate: The billing rate is \$150 per hour for the time spent on performing tasks as described in Attachment A, Scope of Work. Travel time from the Contractor's offices to and from the offices of Water Authority and City, and from the Contractor's offices to and from the job site is not allowable compensable time.
3. Direct Expenses: Compensation for other direct costs incurred by Contractor shall include costs as listed in Table B-1. Water Authority and City will not pay a mark-up for other direct costs.
4. Rate Increases: The Water Authority and City must approve rate increases by Contractor during the duration of this Contract in advance. Labor rate adjustments will not change the not-to-exceed fee for the project. Contractor shall notify the Water Authority in writing 14-calendar days prior for requests of labor rate adjustments for Contractor. The hourly rate increase for Contractor listed in Paragraph 2, Billing Rate shall not exceed 3.0 percent per annum.
5. Invoices: Contractor shall bill Water Authority monthly or within thirty days after each Panel meeting, whichever occurs first. Billing shall be for time and other direct costs as described in Table B-1. All receipts for expenses shall be included in billing statements. Expense items without receipts shall not be reimbursed. Meal and lodging receipts shall be itemized, and alcohol consumption and personal expenses shall not be reimbursed. All expenses shall be billed at cost.

Table B-1
Other Direct Expenses (Job-related only)

Items	Unit Cost
A	Travel. Travel requests must be submitted in advance of travel. Only expenses necessary for furthering the interests of the Water Authority and which maximize the purchasing value of public funds will be approved.
	1. Airfare - Coach or economy class except when coach or economy seats are not available. Itemized receipts are required. At Cost
	2. Lodging - Hotel/motel reimbursement inclusive of hotel and sales taxes. Itemized receipts are required. At Cost
	3. Parking, mileage, tolls and taxis (if less costly than rented cars) are reimbursable. Itemized receipts are required. At Cost. Mileage at IRS rate.
	4. Auto Rental - Mid-size sedan or smaller unless five or more people are to be transported. Receipts are required. Rental car fuel is reimbursable. At Cost
	5. Meals - Itemized receipts are required. Alcoholic beverages are not reimbursable. At Cost up to \$50/day
B	Mileage IRS Rate
C	Printing, faxing, and copying at job sites At Cost
D	Postage and overnight delivery At Cost
E	Telephone At Cost
F	Other ODC items as approved by the Water Authority in writing. At Cost

ATTACHMENT C

PERFORMANCE SCHEDULE

Contractor shall perform such services in a prompt and timely manner in accordance with Attachment A, Scope of Work. Services shall commence upon issue of Notice to Proceed.

PROFESSIONAL SERVICES CONTRACT

1. PARTIES:

The parties to this contract are the SAN DIEGO COUNTY WATER AUTHORITY, a county water authority, (the Water Authority), CITY OF SAN DIEGO, a municipal corporation (City), and JOHN S. GREGG, a sole proprietor (Contractor).

2. SCOPE OF SERVICES:

The services to be provided by Contractor for the Project Review and Coordination Panel for the San Vicente Dam Raise and Recreational Facilities are described in Attachment A.

3. PAYMENT:

(a) Payment for services. The Water Authority and City shall pay for services performed in accordance with this contract according to the payment and fee schedule contained in Attachment B.

(b) Reimbursement of expenses. Contractor will be reimbursed for actual, reasonable and necessary expenses incurred in the performance of services in accordance with the expense reimbursement schedule included in Attachment B.

(c) Maximum payment. The maximum payment under this contract for services and, if authorized, reimbursement of expenses, shall not exceed \$49,500.

(d) Invoices. All invoices for services will be submitted according to Attachment B. The Water Authority generally will process and pay bills within 30 days from receipt. Each bill shall include an invoice showing the amount of services rendered during the billing period and the fee for such services. If reimbursement of expenses is authorized, Contractor shall submit monthly invoices for such expenses, including full documentation of each expense incurred. Payments are subject to a final audit upon completion of services or other termination of this contract.

(e) Audit of Records. Contractor shall maintain complete and accurate records of all payrolls, expenditures, disbursements and other cost items charged to the Water Authority and City or establishing the basis for an invoice, for a minimum of four years from the date of final payment to Contractor. All such records shall be clearly identifiable. Contractor shall allow Water Authority and City representative to inspect, examine, copy and audit such records during regular business hours upon 24 hours' notice.

4. TIME FOR PERFORMANCE:

(a) Contractor will complete all services by December 31, 2014.

(b) Extension of time for unforeseen circumstances. In the event that the Contractor is unable to meet the completion date or schedule of services, if any, due to circumstances beyond Contractor's reasonable control, such as war, riots, strikes, lockouts, work slow down or

stoppage, except strikes, lockouts, or work slow down or stoppage of Contractor's employees or subcontractors, acts of God, such as floods or earthquakes, and electrical blackouts or brownouts, Contractor shall inform the Contract Manager of the additional time required to perform the work and the Contract Manager may adjust the schedule.

5. STANDARD OF PERFORMANCE:

Contractor's services shall be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of Contractor's profession currently practicing under similar conditions. Whenever the scope of work requires or permits approval by the Water Authority and City, it is understood to be approval solely for the purposes of conforming to the requirements of the scope of work and not acceptance of any professional or other responsibility for the work. Such approval does not relieve the Contractor of responsibility for complying with the standard of performance or laws, regulations, industry standards, or from liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of Contractor or its subcontractors. By delivery of completed work, Contractor certifies that the work conforms to the requirements of this contract and all applicable federal, state and local laws. If Contractor is retained to perform services requiring a license, certification, registration or other similar requirement under California law, Contractor shall maintain that license, certification, registration or other similar requirement throughout the term of this Contract.

6. INDEPENDENT CONTRACTOR:

Contractor is an independent contractor. Neither Contractor nor any of Contractor's officers, employees, agents or subcontractors, if any, is an employee of the Water Authority or City by virtue of this contract or performance of any work under this contract.

7. ASSIGNMENT:

Contractor shall not assign or transfer voluntarily or involuntarily any of its rights, duties, or obligations under this contract without the express written consent of the Water Authority and City in each instance.

8. SUBCONTRACTORS:

Contractor will perform the work personally or through Contractor's employees. Contractor may subcontract work only upon prior approval of the Water Authority and in compliance with provisions of the Water Authority's Small Contractor Outreach and Opportunities Program, if the Water Authority determines that the program provisions are applicable.

9. CONTRACTOR'S EMPLOYEES:

(a) Immigration Reform and Control Act of 1986. Contractor is aware of the requirements of the Immigration Reform and Control Act of 1986 and shall comply with those requirements,

including, but not limited to, verifying the eligibility for employment of all of Contractor's agents, employees, subcontractors and Contractors that are included in this contract.

(b) **Limitation of Water Authority and City Liability.** The payment made to Contractor pursuant to this contract shall be the full and complete compensation to which Contractor and Contractor's officers, employees, agents and subcontractors are entitled for performance of any work under this contract. Neither Contractor nor Contractor's officers or employees are entitled to any salary or wages, or retirement, health, leave or other fringe benefits applicable to employees of the Water Authority and City. The Water Authority and City will not make any federal or state tax withholdings on behalf of Contractor. The Water Authority and City shall not be required to pay any workers' compensation insurance on behalf of Contractor.

(c) **Indemnification for Employee Payments.** Contractor agrees to defend and indemnify the Water Authority and City for any obligation, claim, suit or demand for tax, retirement contribution including any contribution to the Public Employees Retirement System (PERS), social security, salary or wages, overtime payment, or workers' compensation payment which the Water Authority and City may be required to make on behalf of Contractor or any employee of Contractor, or any employee of Contractor construed to be an employee of the Water Authority and City, for work done under this contract. This is a continuing obligation that survives the termination of this contract.

10. FAIR EMPLOYMENT PRACTICES:

(a) **Administrative Code Provisions.** Contractor acknowledges and agrees to abide by the following provision of the Water Authority Administrative Code Section 2.24.010 that states:

“(a) It is the policy of the Authority to protect and safeguard the right and opportunity of all persons to seek, obtain, and hold employment without discrimination or abridgment on account of race, color, ethnicity, national origin, ancestry, religion, creed, veteran status, physical disability, mental disability, medical condition, marital status, sex, sexual orientation, age, or other status protected from workplace discrimination by state or federal law. Authority officers, employees and Contractors shall not knowingly deny an Authority opportunity or benefit, discriminate against or harass, any Authority employee, applicant for employment, contractor, vendor, or recipient of Authority services on account of the person's race, color, ethnicity, national origin, ancestry, religion, creed, veteran status, physical disability, mental disability, medical condition, marital status, sex, sexual orientation, age, or other status protected from workplace discrimination by state or federal law. Authority officers, employees and Contractors shall not knowingly give preferential treatment to any applicant for employment, bidder, contractor, vendor, or recipient of Authority services on the basis of race, color, ethnicity, national origin, ancestry, religion, creed, physical disability, mental disability, medical condition, marital status, sex, or sexual orientation.

“(b) This section shall be interpreted in a manner that is consistent with the California and United States Constitutions and applicable state and federal statutes governing workplace discrimination. The terms used in this section shall have the same meaning as defined in state statutes governing the same subject matter.

“(c) Nothing in this section shall be interpreted as prohibiting bona fide occupational qualifications consistent with applicable state and federal law and reasonably necessary to the normal operation of Authority employment or contracting. Nothing in this section shall be interpreted as prohibiting regulations and policies to prevent nepotism or conflicts of interest.

“(d) Nothing in this section shall be interpreted as prohibiting action taken to establish or maintain eligibility for any federal program, where ineligibility would result in a loss of federal funds to the Authority.”

(b) Civil Rights Act. Contractor agrees to comply with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, the Americans with Disabilities Act of 1990, any other applicable federal and state laws and regulations hereinafter enacted, and the Water Authority’s Small Contractor Outreach and Opportunities Program.

(c) Water Authority Discrimination/Harassment Policy. Contractor and its officers, employees, agents and subcontractors shall comply with the Water Authority’s Discrimination/Harassment Prohibition Policy in performance of this contract.

(d) City Provisions. The Contractor shall comply with the City’s Equal Opportunity Contracting Program Consultant Requirements. The Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. The Contractor shall provide equal opportunity in all employment practices. The Contractor shall ensure that its subcontractors comply with the City’s Equal Opportunity Contracting Program Consultant Requirements. Nothing in this paragraph shall be interpreted to hold the Contractor liable for any discriminatory practice of its subcontractors.

The Contractor shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors or suppliers. The Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. The Contractor understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, and other sanctions. This language shall be in contracts between the Contractor and any subcontractors, vendors and suppliers.

Upon the City’s request, the Contractor agrees to provide to the City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that the Contractor has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by the Contractor for each subcontract or supply contract. The Contractor further agrees to fully cooperate in any investigation conducted by the City pursuant to the City’s Nondiscrimination in Contracting Ordinance [San Diego Municipal Code sections 22.3501-22.3517.] The Contractor understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in remedies being ordered against the Contractor up to and including contract termination, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. The Contractor further understands and agrees that the procedures, remedies and sanctions provided for in the Nondiscrimination Ordinance apply only to violations of said Nondiscrimination Ordinance.

(e) Indemnification. To the fullest extent permitted by law and without limitation by the provisions of Section 19 relating to insurance, the Contractor shall also indemnify, defend and hold harmless the Water Authority and City, and its directors, officers, employees and agents from and against all liability (including without limitation all claims, damages, penalties, fines, and judgments, associated investigation and administrative expenses, and defense costs, including but not limited to reasonable attorneys' fees, court costs, and costs of alternative dispute resolution) resulting from any claim of discrimination or harassment, including but not limited to sexual harassment, arising from the conduct of the Contractor or any of the Contractor's officers, employees, agents, licensees, or subcontractors. In the event of a discrimination or harassment complaint against any employee, agent, licensee or subcontractor of the Contractor or its subcontractors, the Contractor shall take immediate and appropriate action in response to such complaint, including, but not limited to termination or appropriate discipline of any responsible employee, agent, licensee or subcontractor. The provisions of this Section survive completion of the services or termination of the Contract.

11. WORKPLACE CONDUCT AND BEHAVIOR:

(a) Contractor and Contractor's officers, employees, agents and subcontractors shall comply with the Water Authority's Substance-free Work Place Policy, Information and Communications Systems Policy, and other rules and regulations governing work place safety, conduct, and behavior, for any portion of the work performed on the premises of the Water Authority or using Water Authority facilities or equipment.

(b) Contractor and Contractor's officers, employees, agents and subcontractors shall comply with the City's Drug-Free Workplace requirements set forth in Council Policy 100-17, adopted by San Diego Resolution R-277952.

12. OWNERSHIP OF WORK PRODUCT:

Upon delivery, the work product, including without limitation, all original reports, writings, recordings, drawings, files, and detailed calculations developed under this contract are the property of the Water Authority and City. Contractor agrees that all copyrights which arise from creation of the work pursuant to this contract shall be vested in the Water Authority and City and waives and relinquishes all claims to copyright or other intellectual property rights in favor of the Water Authority and City. Water Authority and City acknowledges that its use of the work product is limited to the purposes contemplated by the scope of work and that the Contractor makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the scope of work.

13. FORMAT OF DOCUMENTS:

Documents submitted to the Water Authority and City in electronic format shall be formatted according to specifications provided by the Water Authority and City, or if not otherwise specified, in Microsoft Word, Excel, PowerPoint or other Microsoft Suite (2003) format as appropriate for the particular work product or, if directed by the Contract Manager in Adobe Acrobat pdf format.

14. CHANGES IN WORK:

No payment for changed or additional work shall be made unless the changed or additional work has first been approved in writing by the Contract Manager and the parties have agreed upon the appropriate adjustment, if any, to the payment schedule and maximum payment amount for the changed or additional work. The Contract Manager may order changes or additions to the scope of work. Whether a change or addition to the scope of work is proposed by the Contractor or ordered by the Contract Manager, the parties shall in good faith negotiate an appropriate adjustment, if any, to the payment schedule and maximum payment for the changed or additional work. An approved change or addition, along with the payment adjustment, if any, will be effective upon an amendment to this contract executed by both parties. The amendment shall not render ineffective or invalidate unaffected portions of this contract. All changes in work that increase the amount of payment shall be subject to Section 4.04.040 of the Water Authority Administrative Code.

15. CONFIDENTIALITY:

(a) Confidential Nature of Information. Contractor shall treat all information obtained from the Water Authority and City in the performance of this contract as confidential and proprietary to the Water Authority and City. Contractor shall treat all records and work product prepared or maintained by Contractor in the performance of this contract as confidential.

(b) Limitation on use and disclosure. Contractor agrees that it will not use any information obtained as a consequence of the performance of work for any purpose other than fulfillment of Contractor's scope of work. Contractor will not disclose any information prepared for the Water Authority and City, or obtained from the Water Authority and City or obtained as a consequence of the performance of work to any person other than the Water Authority and City, or its own employees, agents or subcontractors who have a need for the information for the performance of work under this contract unless such disclosure is specifically authorized in writing by the Water Authority and City.

(c) Security plan. If requested by the Contract Manager, Contractor shall prepare a security plan to assure that information obtained from the Water Authority and City or as a consequence of the performance of work is not used for any unauthorized purpose or disclosed to unauthorized persons. Contractor shall advise the Water Authority and City of any request for disclosure of information or of any actual or potential disclosure of information.

(d) Survival. Contractor's obligations under this paragraph shall survive the termination of this contract.

16. PROHIBITED INTEREST:

No official or employee of the Water Authority or City who is authorized in such capacity on behalf of the Water Authority or City to negotiate, make, accept, or approve, or take part in negotiating, making, accepting, or approving this contract, shall become directly or indirectly interested in this contract or in any part thereof. No officer or employee of the Water Authority or City who is authorized in such capacity and on behalf of the Water Authority or City to

exercise any executive, supervisory, or similar functions in connection with the performance of this contract shall become directly or indirectly interested personally in this contract or any part thereof.

17. CONFLICT OF INTEREST:

(a) Local Conflict of Interest Code Compliance. The Water Authority has determined, based on the scope of the services to be provided by Contractor under this contract, that this contract does not confer on Contractor or any of Contractor's employees the status of a "designated employee" or "Consultant" of the Water Authority for the purposes of the Water Authority's Local Conflict of Interest Code and the California Political Reform Act. This contract does not require or permit Contractor to make a governmental decision as specified in 2 Cal. Code of Regs. § 18701, subdiv. (a)(2)(A), or serve in a staff capacity as specified in 2 Cal. Code of Regs. § 18701, subdiv. (a)(2)(B).

(b) City Conflict Provisions: The Contractor is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including but not limited to California Government Code sections 1090, et. seq. and 81000, et. seq., and the City of San Diego Ethics Ordinance, codified in the San Diego Municipal Code at sections 27.3501 to 27.3595.

If, in performing the Professional Services set forth in this Contract, the Contractor makes, or participates in, a "governmental decision" as described in Title 2, section 18701(a)(2) of the California Code of Regulations, or performs the same or substantially all the same duties for the City that would otherwise be performed by a City employee holding a position specified in the Water Department's conflict of interest code, the Contractor shall be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing the Contractor's relevant financial interests.

If the City requires the Contractor to file a statement of economic interests as a result of the Professional Services performed, the Contractor shall be considered a "City Official" subject to the provisions of the City of San Diego Ethics Ordinance, including the prohibition against lobbying the City for one year following the termination of this Contract.

(c) Disqualification. Contractor shall not make or participate in making or in any way attempt to use Contractor's position to influence a governmental decision in which Contractor knows or has reason to know Contractor has a direct or indirect financial interest other than the compensation promised by this contract. Contractor will not have such interest during the term of this contract. Contractor will immediately advise the General Counsel of the Water Authority and City if Contractor learns of a financial interest of Contractor's during the term of this contract. If Contractor's participation in another Water Authority or City project would create an actual or potential conflict of interest, in the opinion of the Water Authority and City, the Water Authority and City may disqualify Contractor from participation in such other project during the term of this Contract.

18. MUTUAL INDEMNIFICATION:

To the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782.8), the Water Authority, City and Contractor shall defend (with legal counsel reasonably acceptable to the Water Authority and the City), indemnify and hold harmless each other and their respective officers, agents, departments, officials, representatives and employees from and against all claims, losses, costs, damages, injuries, expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of that party, its employees, agents, Subcontractor(s), anyone directly or indirectly employed by that party, or anyone that they control, in performing under this Contract.

19. INSURANCE:

(a) Requirement. Contractor shall procure and maintain during the period of performance of this contract and for 24 months following completion, insurance from insurance companies authorized to do business in the State of California, as set forth in this section. These policies shall be primary insurance as to the Water Authority and City so that any other coverage held by the Water Authority and City shall not contribute to any loss under Contractor's insurance.

Automobile liability: (with coverage at least as broad as ISO form CA 00 01 10 01, for "any auto") coverage in an amount not less than \$1,000,000 per accident for personal injury, including death, and property damage.

(b) Endorsements. The insurance policies shall be endorsed as follows:

For the automobile liability insurance, the Water Authority and City (including its directors, officers, employees, and agents) shall be named as additional insured, and the policy shall be endorsed with a form equivalent to ISO form CG 20 10 10 93, that contain the provisions required by this contract.

Contractor's insurance is primary to any other insurance available to the Water Authority and City with respect to any claim arising out of this Contract. Any insurance maintained by the Water Authority and City shall be excess of the Contractor's insurance and shall not contribute with it. The Contractor's endorsement of insurance shall include a waiver of any rights of subrogation against the Water Authority and City, and its directors, officers, employees and agents.

Contractor's insurance will not be canceled, limited, amended, reduced in coverage amount, or allowed to expire without renewal until after 30 days' written notice has been given to the Water Authority and City, or after 10 days' written notice in the case of cancellation for non-payment of premium.

(c) Qualifications of Insurer. The insurance shall be provided by an acceptable insurance provider, as determined by the Water Authority and City, which satisfies the following minimum

requirements: An insurance carrier admitted to do business in California and maintaining an agent for process within the state. Such insurance carrier shall maintain a current A.M. Best rating classification of "A-" or better and a financial size of "\$10 million to \$24 million (Class V) or better", or A Lloyds of London program provided by syndicates of Lloyds of London and other London insurance carriers, providing all participants are qualified to do business in California and the policy provides for an agent for process in the state.

(d) Provision of Insurance Prior to Commencement of Services. Before commencing any services, Contractor shall furnish certificates of insurance and endorsements affecting coverage on forms provided by Water Authority and City, or on equivalent ISO forms that contain provisions required by this contract.

20. ACCIDENT REPORTS:

Contractor shall immediately report (as soon as feasible, but not more than 24 hours) to the Water Authority and City any accident or other occurrence causing injury to persons or property during the performance of this Contract. If required by the Water Authority's Risk Manager, the report shall be made in writing and shall include, at a minimum: (a) the names, addresses, and telephone numbers of the persons involved, (b) the names, addresses and telephone numbers of any known witnesses, (c) the date, time and description of the accident or other occurrence.

21. COVENANT AGAINST CONTINGENT FEES:

Contractor agrees that its firm has not employed or retained any company or person, other than a bona fide employee working for Contractor, to solicit or secure this contract, and that Contractor has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this contract. For breach or violation of this provision, the Water Authority shall have the right to terminate this contract without liability, or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fees, gift, or contingent fee.

22. TERMINATION OR ABANDONMENT:

(a) Water Authority's and City's Rights. The Water Authority and City has the right to terminate or abandon any portion or all of the work by giving 10 days' written notice. Upon receipt of a notice of termination, Contractor shall perform no further work except as specified in the notice. Before the date of termination, Contractor shall deliver to Water Authority and City all work product, whether completed or not, as of the date of termination and not otherwise previously delivered. The Water Authority and City shall pay Contractor for services performed in accordance with this contract before the date of termination. If this contract provides for payment of a lump sum for all services or by task and termination occurs before completion of the work or any defined task which according to the performance schedule was commenced before the notice of termination, the fee for services performed shall be based on an amount mutually agreed to by the Water Authority, City, and Contractor for the portion of work completed in conformance with this contract before the date of termination. In addition, the

Water Authority and City will reimburse Contractor for authorized expenses incurred and not previously reimbursed. The Water Authority and City shall not be liable for any fees or costs associated for the termination or abandonment except for the fees, and reimbursement of authorized expenses, payable pursuant to this section.

(b) Contractor's Rights. Contractor, if Contractor is not in default or breach, may terminate Contractor's obligation to provide further services under this contract upon 30 days' written notice only in the event of a material default by the Water Authority and City, which default has not been cured within 30 days following the written notice.

23. SUCCESSORS OR ASSIGNS:

All terms, conditions, and provisions of this contract shall apply to and bind the respective heirs, executors, administrators, successors, and assigns of the parties. Nothing in this paragraph is intended to affect the limitation on assignment.

24. DAMAGE OR LOSS OF EQUIPMENT OR FACILITIES:

(a) General Obligation. Contractor shall pay to the Water Authority and City the replacement cost of any equipment or repair cost of any facilities provided by the Water Authority and City for Contractor's use in performance of services that is lost or damaged by Contractor or Contractor's officers, employees, agents or subcontractors.

(b) Keys. During the term of the contract, Contractor may be issued keys to Water Authority and City facilities in order to perform the scope of work. Keys shall not be loaned, duplicated, or given to anyone not authorized to have the keys. Contractor will sign for each key and each key will be returned to the project manager when access to that area is no longer authorized, or at the end of the contract term, whichever is applicable. Should keys become lost or stolen, Contractor shall immediately notify the Contract Manager. A charge will be assessed for all expenses incurred by the Water Authority and City, including the replacement of locks, lock cores, keys, and other materials necessary to ensure the Water Authority and City security levels are returned to the same level existing prior to the loss of the key(s). The cost of replacing locks may be as much as \$40,000.

25. ELECTRONIC COMMUNICATIONS:

During the course of this contract, communications may occur through sending, receiving or exchanging electronic versions of documents and e-mails using commercially available computer software and Internet access. Contractor, Water Authority, and City acknowledge that the Internet is occasionally victimized by the creation and dissemination of so-called viruses, or similar destructive electronic programs. Contractor, Water Authority, and City view the issues raised by these viruses seriously and have invested in document and e-mail scanning software that identify and reject files containing known viruses. Contractor agrees to update its system with the software vendor's most current releases at regular intervals. Because of the virus scanning software, the respective computer systems of the parties may occasionally reject a communication. The parties acknowledge that this occurrence is to be expected as part of the

ordinary course of business. Because the virus protection industry is generally one or two steps behind new viruses, neither party can guarantee that its respective communications and documents will be virus free. Occasionally, a virus will escape and go undetected as it is passed from system to system. Although each party will use all reasonable efforts to assure that its communications are virus free, neither party warrants that its documents will be virus free. Each party agrees to advise the other if it discovers a virus in its respective system that may have been communicated to the other party.

26. LAWS AND VENUE:

This contract and disputes arising out of or relating to the contract or the parties' relationship are governed by the laws of the State of California. Any action or proceeding arising out of or relating to the contract or the parties' relationship shall be brought in a state or federal court situated in the County of San Diego, State of California.

27. ADMINISTRATION:

(a) Contractor's principal place of business and agent for service of process. Contractor's principal place of business is 665 South Ridgemark Drive, Hollister, California 95023. Contractor's agent for service of process is John S. Gregg.

(b) Water Authority's Representative. The Water Authority's representative for administration of this contract is Jeff Shoaf, who is the designated Contract Manager. The Water Authority may change the Contract Manager at any time upon notice to the Contractor.

(c) Contractor's Representative. The Contractor's representative for administration of this contract is John S. Gregg, who is designated as the Project Manager. The Contractor may change the Project Manager upon written notice to and approval by the Contract Manager.

(d) Notices. Any notice or instrument required to be given or delivered by law or this contract shall be effective upon receipt thereof and shall be by personal service or delivered by depositing the same in any United States Post Office, registered or certified, postage prepaid, addressed to:

San Diego County Water Authority
4677 Overland Avenue
San Diego, CA 92123-1233
Attn: John A. Economides, Director of Engineering

City of San Diego
600 B Street, Suite 700
San Diego, CA 92101
Attn: Marsi A. Steirer, Deputy Water Department Director

John S. Gregg
665 South Ridgemark Drive
Hollister, California 95023

Either party may change the address or identity of the person for notices under this paragraph by written notice to the other delivered in accordance with this paragraph.

(e) Routine Administrative Communications. Routine administrative communication required to be in writing may be by personal delivery, mail, facsimile transmission or electronic mail as agreed between the Contractor and Contract Manager.

28. INTEGRATION AND MODIFICATION:

This contract represents the entire understanding of the Water Authority, City, and Contractor as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This contract may not be modified, amended, or altered except in writing signed by the Water Authority, City, and Contractor.

29. ADVICE OF COUNSEL:

The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms, and conditions of this contract, and that the decision of whether or not to seek the advice of counsel with respect to this contract is a decision which is the sole responsibility of each of the parties hereto. This contract shall not be construed in favor or against either party by reason of the extent to which each party participated in the drafting of the contract.

30. INDEPENDENT REVIEW:

Each party hereto declares and represents that in entering this contract it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each party further declares and represents that this contract is being made without reliance upon any statement or representation not contained herein of any other party, or any representative, agent, or attorney of any other party.

31. TIME:

Time is of the essence in this contract. Any reference to days means calendar days unless otherwise specifically stated.

32. ASSIGNMENT OF ANTI-TRUST CLAIMS:

The Contractor offers and agrees to assign to the Water Authority and City all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act [Chapter 2 (commencing with § 16700) of Part 2 of Division 7 of the Business and Professions Code], arising from purchases of goods, services, or materials pursuant to the contract. This assignment shall become effective at the time the Water Authority and City tenders final payment to Contractor, without further acknowledgment by the parties. The Contractor shall have the rights set forth in Sections 4553 and 4554 of the Government Code.

33. TAXES:

The Contractor shall pay all applicable federal, state, and local excise, sales, consumer use, and other similar taxes required by law for the execution of the work.

34. SIGNATURES:

The individuals executing this contract represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

IN WITNESS WHEREOF, the parties have executed this contract on the following date.

DATED: _____, 2007

San Diego County Water Authority

City of San Diego

By: _____

Paul A. Lanspery
Deputy General Manager

By: _____

John S. Gregg

By: _____

John S. Gregg

Approved as to form:

DANIEL S. HENTSCHKE
General Counsel
San Diego County Water Authority

RAY PALMUCCI
Deputy City Attorney
City of San Diego

ATTACHMENT A

SCOPE OF WORK

TASK 1.0 GENERAL

- 1.1 An Agreement Between the San Diego County Water Authority and the City of San Diego for the Emergency Storage Project provides for the Project Review and Coordination Panel for the San Vicente Dam Raise and Recreational Facilities. The Panel consists of five members: one representative member appointed by the General Manager of Water Authority; one representative member appointed by the Chief Operating Officer of the City of San Diego; and three independent members, one who is a professional engineer, one who is experienced in public finance, and one who is experienced in the administration of contracts for water resource projects. These three members shall be mutually agreed to by the General Manager of Water Authority and the Chief Operating Officer of the City, or their designees. This Contract is for the representative member who is experienced in the administration of contracts for water resource projects.

TASK 2.0 SCOPE OF WORK TASKS

- 2.1 *The scope of work included in this Contract shall be in accordance with the Agreement between the Water Authority and the City of San Diego for the Emergency Storage Project, Appendix F Dispute Resolution (Attachment 1), and includes, but is not limited to the following:*
- 2.1.1 Attend regular meetings at the project site in order for Panel to be kept informed of the project developments. Regular site visits shall be a minimum of four hours per visit and no less than one visit every six months. Depending on the progress of the work, the frequency of the visits may be changed as agreed among the Water Authority, City and Panel.
- 2.1.2 Provide prompt and orderly means of resolving disputes between the staffs of City and Water Authority in connection with the design, construction, and the operation and maintenance of the Project.
- 2.1.3 Provide consultation, review, and resolution of disputes between the staffs of the City and Water Authority, as designated in Articles 2, 3, 4, 5, 6, 8, 9, 10, 11, and 16 of the Agreement between the Water Authority and the City for the ESP (Attachment 1) on all matters relating to the design and construction of Project and the operation, maintenance, repair, and replacement of the Project including, but not limited to the following:
- 2.1.3.1 Design and construction of the Project;

- 2.1.3.2 Documentation and review of any operation and maintenance costs; seasonal storage credits; accounts of water in storage of each party; evaporative, seepage, leakage, spill and other water losses; loss of storage capacity such as by sedimentation; periodic dam safety inspections; replacement of capital components of the Project; and implementation of jointly funded improvements of the Project.
- 2.2 Submission of dispute for resolution shall be to each member of the Panel and on the other party by certified mail or overnight delivery. The other party may submit a written response to the submission not more than ten calendar days following receipt of the submission. Any response shall be served on each member of the Panel and the other party by certified mail or overnight delivery.
- 2.3 In the event of an absent Panel member, a letter shall be sent with any proposed action by registered or certified mail, postage prepaid, return receipt requested. If no written protest from the absent member is received by the Chair within 30 calendar days of the date of receipt of the letter, the decision shall be final.
- 2.4 The meeting of the Panel to consider the resolution of a dispute submitted by one of the other parties shall be informal and shall be intended to facilitate the open discussion of the dispute. The Panel may request a presentation by the parties regarding the dispute and may request additional information from the parties or from other persons to assist the Panel in making a recommendation to resolve the dispute.
- 2.5 Upon conclusion of the meeting (which may be continued from time to time) and the receipt of all required information regarding a dispute submitted to the Panel, the Panel shall provide each party with its actions regarding the resolution of each dispute. Provide all actions of the Panel in writing within seven calendar days of the conclusion of the meeting to each member of the Panel, Water Authority, and City. All actions by the Panel shall be by majority vote.

ATTACHMENT B

PAYMENT AND FEE SCHEDULE

1. Total Contract Amount: The total contract amount shall not exceed \$49,500, including labor and direct expenses for performing the tasks as described in Attachment A - Scope of Work.
2. Billing Rate: The billing rate is \$150 per hour for the time spent on performing tasks as described in Attachment A, Scope of Work. Travel time from the Contractor's offices to and from the offices of Water Authority and City, and from the Contractor's offices to and from the job site is not allowable compensable time.
3. Direct Expenses: Compensation for other direct costs incurred by Contractor shall include costs as listed in Table B-1. Water Authority and City will not pay a mark-up for other direct costs.
4. Rate Increases: The Water Authority and City must approve rate increases by Contractor during the duration of this Contract in advance. Labor rate adjustments will not change the not-to-exceed fee for the project. Contractor shall notify the Water Authority in writing 14-calendar days prior for requests of labor rate adjustments for Contractor. The hourly rate increase for Contractor listed in Paragraph 2, Billing Rate shall not exceed 3.0 percent per annum.
5. Invoices: Contractor shall bill Water Authority monthly or within thirty days after each Panel meeting, whichever occurs first. Billing shall be for time and other direct costs as described in Table B-1. All receipts for expenses shall be included in billing statements. Expense items without receipts shall not be reimbursed. Meal and lodging receipts shall be itemized, and alcohol consumption and personal expenses shall not be reimbursed. All expenses shall be billed at cost.

Table B-1
Other Direct Expenses (Job-related only)

Items		Unit Cost
A	Travel. Travel requests must be submitted in advance of travel. Only expenses necessary for furthering the interests of the Water Authority and which maximize the purchasing value of public funds will be approved.	
	1. Airfare - Coach or economy class except when coach or economy seats are not available. Itemized receipts are required.	At Cost
	2. Lodging - Hotel/motel reimbursement inclusive of hotel and sales taxes. Itemized receipts are required.	At Cost
	3. Parking, mileage, tolls and taxis (if less costly than rented cars) are reimbursable. Itemized receipts are required.	At Cost. Mileage at IRS rate.
	4. Auto Rental - Mid-size sedan or smaller unless five or more people are to be transported. Receipts are required. Rental car fuel is reimbursable.	At Cost
	5. Meals - Itemized receipts are required. Alcoholic beverages are not reimbursable.	At Cost up to \$50/day
B	Mileage	IRS Rate
C	Printing, faxing, and copying at job sites	At Cost
D	Postage and overnight delivery	At Cost
E	Telephone	At Cost
F	Other ODC items as approved by the Water Authority in writing.	At Cost

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ATTACHMENT C

PERFORMANCE SCHEDULE

Contractor shall perform such services in a prompt and timely manner in accordance with Attachment A, Scope of Work. Services shall commence upon issue of Notice to Proceed.